

OVERSIGHT FIELD HEARING ON THE ENDANGERED SPECIES ACT 30 YEARS LATER: THE KLAMATH PROJECT

OVERSIGHT FIELD HEARING

BEFORE THE

SUBCOMMITTEE ON WATER AND POWER

OF THE

COMMITTEE ON RESOURCES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

Saturday, July 17, 2004, in Klamath Falls, Oregon

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OVERSIGHT FIELD HEARING ON THE ENDANGERED SPECIES ACT 30 YEARS LATER: THE KLAMATH PROJECT

Saturday, July 17, 2004
U.S. House of Representatives
Subcommittee on Water and Power
Committee on Resources
Klamath Falls, Oregon

The Subcommittee met, pursuant to call, at 9:00 a.m., at the Ross Ragland Theater, 218 North Seventh Street, Klamath Falls, Oregon, Hon. Ken Calvert [Chairman of the Subcommittee] presiding.

Present: Representatives Calvert, Radanovich, and Walden.

Also Present: Representatives Herger and Doolittle.

Mr. ELLIOTT. Good morning, ladies and gentlemen. I'm John Elliott, Chair of the Klamath County Board of Commissioners. It is my distinct honor to welcome you here this morning for this meeting of the Water and Power Subcommittee, chaired by Congressman Ken Calvert of California. And without any further ado, because I know we've got some listening to do for the next two to three hours, I'd like to introduce Congressman Ken Calvert, California.

Mr. CALVERT. Thank you very much. The oversight field hearing by the Subcommittee on Water and Power will come to order. The Subcommittee is meeting today to hear testimony on the Endangered Species Act and the Klamath Project. Mr. Mitchum, my name is Ken Calvert; I'm Chairman of the Subcommittee, and I welcome everybody here today who has taken valuable time to listen and educate others about this and the community's future. I also thank those who help set this hearing up and the Members joining me today who have worked hard to find resolution on the complex issues we'll hear about later.

Before we go into opening statements and testimony, I'll ask unanimous consent for our distinguished colleagues, Mr. Doolittle and Mr. Herger, to sit on the dais.

Without objection, so ordered.

I would like to recognize a number of individuals who will carry out some important duties before we begin. First, Callie Crawford, Taylor Boyd, Jacqueline Macy, and Nolan Macy, all from the Tulelake area here in California, or down in California, I should

say, will present the colors. And if you'll all please come forward, we'll begin with that first. Thank you.

[Colors presented.]

Mr. CALVERT. Next, will John Bowen please come up, who will lead us in the benediction?

[Benediction given.]

Mr. CALVERT. Next, will Frank King please come forward and lead us in the Pledge of Allegiance?

Mr. KING. Thank you all for coming to this hearing. I'm Frank King. I'm a veteran of World War II and homesteader of '49. Would you please join me in a moment of silence for those veterans and the armed forces people serving our country now?

Thank you. Now, will you follow me in the Pledge of Allegiance, please.

[Pledge of Allegiance.]

Mr. CALVERT. Thank you, Mr. King. Now, it's my privilege to introduce the local Congressman from this region, someone that's my privilege to work with every day and does a fine job for not just for this region but the State of Oregon and the entire country, Mr. Walden.

STATEMENT OF THE HON. GREG WALDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. WALDEN. Thank you very much, Mr. Chairman. Thank you.

Thank you, and thank you, Mr. Chairman, for convening this field hearing here in Klamath Falls to look at these issues surrounding the Endangered Species Act.

Before I begin my opening statement and all that, I have to share some difficult news. Unfortunately we've heard some bad news about one of Klamath's own. Lance Corporal Brian Kelly, a lifelong Klamath Falls resident and son of former Klamath Falls Police Department Officer Pat Kelly and Joanie Kelly, was killed in Iraq on Thursday. And so Mr. Chairman, may I suggest that we pause for a moment of silence at this time in memory of Lance Corporal Brian Kelly, and certainly in support of his family and his parents.

Mr. Chairman, I want to thank you again for convening this hearing in the Klamath Basin. The issues that have been faced by the people in this basin have been severe. There have been threats not only to the species, but obviously to the way of life of many in this basin. And yet, through all of this, there has been the sense of the need to try and work together, even in very difficult times and with very different agendas. The need to try to find solutions to a very complex problem that, while triggered by a decision involving the Endangered Species Act, had been coming for some time. And it will be some time before all the problems are resolved. But there is a spirit in this basin of trying to find solutions.

On the way here, you know, we diverted to look at the A Canal screening. The accomplishment there is, I think, significant to the enhanced survival of the sucker fish. It was long overdue, and it's an investment that the Federal Government made to the tune of some \$15 million. But it's essential in our efforts to try and improve the survivability of the sucker fish. Also we're working, as

you know, on solutions to fish passage at Chiloquin Dam, to re-access up to 95 percent of the sucker's habitat.

There are a number of conservation projects underway in this basin, teaming farmers with government agencies to figure out ways to better utilize water, be more efficient in its use, and farm community has stepped forward financially and otherwise to be good stewards of the land and the water.

And there are many other issues that are being debated, sometimes fiercely, and it's understandable when you look at everything that's at stake. But there is progress being made in this basin, solid, step-by-step progress. We all know there's a lot more to be done.

The reason that we're here today, in my opinion, is to look at the role of a Federal law that is 30 years old and never been updated. Endangered Species Act is a very difficult law to administer for the agencies, and I think the things we've seen here in the basin have given me a great passion to try and fix this law, fix it so that it works for the people and fix it so it works for the species.

It was as a result of a Resources Committee field hearing after the water had been cutoff in 2001 that drove the agencies, in collaboration, frankly, with the Bush Administration, to ask for an independent peer review of the major decisions made in the Klamath Basin, the decisions to keep a high lake level and to cutoff water to the farmers. The National Academy of Sciences was brought in, and I think most of us have this, their final report. And in this, while they say that many of the decisions were based on sound science, there were real questions about the two principal decisions, of keeping high lake levels and stream flows. And that led me to believe that there needs to be outside independent peer review of decisions to list or delist a species, work on recovery programs and consultations.

We do this in many areas. The Federal Drug Administration has 30 peer review groups; 5 of the 30 committees are statutory, created by the 1976 Medical Devices Act. The Department of Health and Human Services has major 18-member peer review panels called National Committee on Vital and Health Statistics. It reviews all data that comes in and out of HHS before administrative decisions are made. The Marine Mammal Protection Act has peer review commission that conducts stock assessments and reviews recovery plans. Even the No Child Left Behind Education Act has a peer review component. The Labor Workforce Investment Act of the Department of Labor requires peer review to evaluate training programs. Ag Research and Extension and Education Reform Act requires peer review. The Safe Drinking Water Act requires peer review. When it comes to the survival of the species or its extinction or the survival of a community or its economic extinction, why in the devil wouldn't we ask for peer review so that we get it right? That's what needs to be done.

Having said that, Mr. Chairman, I know that saying peer review is, in my opinion, a good thing, how we implement that will be the challenge, because literally there are hundreds of decisions made every day. We don't want to bog down the process to the point it doesn't work. But clearly we have to do better. We have to upgrade

a law that's 30 years old, that isn't working, and we have to make it right.

So Mr. Chairman, I thank you for bringing the committee here, I thank my colleagues for their efforts throughout time on these issues, and before I close, I want to recognize that I have a statement here from Senator Gordon Smith, who serves on the Subcommittee on Water and Power, or I'm sorry, who serves on the Finance Committee, and is also on the Special Committee on Aging and on Commerce, Science, and Transportation, Energy and Natural Resources, and Rules and Administration. He's been a real advocate for fixing the problems in the basin. His legislative assistant, Valerie West, no newcomer to Oregon issues, is here as well for the hearing, and so I welcome Valerie, and I'd like to ask the committee accept Senator Smith's statement into the record.

Mr. CALVERT. Without objection, the Senator's full statement will be entered into the record. Gentleman have any more comments?

[The statement submitted for the record by Senator Smith follows:]

Statement of The Honorable Gordon H. Smith, a U.S. Senator from the State of Oregon

Mr. Chairman, I appreciate the Subcommittee convening this important hearing in Klamath Falls. It is vital that we examine how the Endangered Species Act (ESA) is being implemented and enforced thirty years after its enactment.

Unfortunately, the goals of the ESA have too often been coopted by those with other agendas. As the late Michael Kelly so eloquently wrote in July 2001, "the Act has worked as intended, but it has been exploited by environmental groups whose agenda is to force humans out of lands they wish to see returned to a pre-human condition. Never has this been made more nakedly, brutally clear than in the battle of Klamath Falls...."

It is timely to re-examine the Act, and the standards established under the Act. The best-available data standard for science under the ESA is ill-defined and allows for sweeping regulatory decisions when little data—or data of poor quality—is all that is available. Also, the lack of peer review of that data or decisions based on such data, have resulted in decisions made in the name of the ESA, that were not supported by the evidence. Critical habitat designations often encompass huge geographic areas, limiting human activity.

Decisions are often made at the field level, and any efforts to review or modify them have, too often in recent years, led to the unfounded charges of "politicizing" science. Scientists cannot get their work published in academic journals unless it is peer-reviewed. To me, it is imperative that decisions that affect people's livelihoods and property under the ESA be peer reviewed, and some standard for the science used in these decisions must be established.

That is why I was proud to introduce S. 2009, legislation that would require a higher standard for the science used in administering the ESA. The "Sound Science for Endangered Species Act Planning Act of 2004" is the Senate version of Congressman Walden's peer review bill. It would require independent scientific peer review of certain actions taken by the regulatory agencies under the Endangered Species Act. In addition, it would require the Secretary of the Interior and the Secretary of Commerce to give greater weight to scientific or commercial data that is empirical or has been field-tested or peer-reviewed.

In recent years, we in the Northwest have experienced situations in which federal agency scientists either demanded actions not supported by scientific data, or actually fabricated the data itself. In December 2001, it was revealed that federal employees had submitted hairs from a Canada lynx being held in captivity as though they had been recovered during field surveys in several national forests to determine the range and habitat of this threatened species.

Obviously, this example pales in comparison to the biological decisions in 2001 that led to water being cut off to Klamath Project irrigators. That decision cannot be undone, but it must not be repeated. As the National Academy of Sciences' report made clear, the decisions pertaining to lake elevations in Upper Klamath Lake and flows in the Klamath River were not supported by the empirical data, and the suck-

ers and the salmon in this basin will never be recovered by focusing solely on the federal Klamath Project.

I look forward to working with my House colleagues to find solutions to the ESA that will actually recover species while maintaining a strong economy and way of life for those in Klamath Falls and across this nation who make their living from the land.

Mr. WALDEN. No, Mr. Chairman, I just appreciate, again, the Committee's diligence on these issues and support for the people and values of this basin, and thank you for being here.

**STATEMENT OF THE HON. KEN CALVERT, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. CALVERT. Thank you. I will make a brief opening statement since we're here today to hear directly from various folks who are on the ground, have firsthand knowledge of these issues, and that's what we want to hear. I would like to encourage those of you in the audience who want to submit testimony for the record, please do so.

The whole point of the field hearing is to hear from those affected directly. Since we don't have time to hear from everyone, we'll certainly accept any statements for the record. So please take that opportunity.

Thirty years ago, as Mr. Walden pointed out, Congress had the best of intentions when it passed the Endangered Species Act. In 30 years, only 7 species out of 1,300 have been recovered, and those are mainly due to other conservation laws. That means that the Endangered Species Act has a success rate of less than 1 percent. But at the same time, communities across the west are stopped cold in their tracks to the point where some legitimately wonder whether their way of life has also been endangered. For instance, entire projects, including a hospital, are suddenly scrapped or delayed in my part of the country, southern California, because of the Delhi Sands Flower-Loving Fly, or communities or forests are needlessly torched because the Endangered Species Act wouldn't allow for thinning in my part of southern California. We're all too aware of the impacts right here in this part of Oregon.

In fact, for the record I would like a show of hands of those who have been affected firsthand by the 2001 water shutoff. And I can't see you, but raise your hands out there. Please, by the way, I will make a comment, any outward expression—this is a congressional hearing, any outward expression, unless it's asked for or acknowledged by the Chair, is not allowed, so we would appreciate—either pro or con, so we can do this in a very business-like manner.

Clearly, something isn't working. No one would ask you to buy four tires for an old car that doesn't run. But in its current form, that's exactly what the Endangered Species Act is really doing, pouring more money into a broken, tired program and creating more economic hardships for those already caring for their land.

Today represents an historic opportunity to right the wrongs of past and bring about positive change for the benefit of the American people and wildlife. We can bring the Endangered Species Act into the 21st century while helping communities in the Klamath Basin have economic and water certainty. We've already found here through peer-reviewed, independent science conducted by the

National Research Council that more water for fish doesn't necessarily mean more fish protections. I just hope we're utilizing that science to its fullest extent.

There's no reason why we can't require by law independent, peer-reviewed science for every major aspect of the Endangered Species Act and use that science to make the best-informed decisions in the decisionmaking process. This is not a new idea for other Federal agencies, as was pointed out by Mr. Walden. They do it on a daily basis. Everyone should support this effort if they truly care about protecting and recovering endangered species. Today's hearing, like our hearings in 2002, is a giant results-oriented leap forward in this march. Next week we will continue when the Resources Committee meets to pass bills, including Mr. Walden's bill, that will bring the Endangered Species Act out of the old school way of thinking. We owe you, who have to live with the Endangered Species Act every day, nothing less.

With that, I'd now like to recognize Mr. Radanovich for his opening statement.

[The prepared statement of Mr. Calvert follows:]

**Statement of The Honorable Ken Calvert, Chairman,
Subcommittee on Water and Power**

The Subcommittee on Water and Power will come to order. I am Ken Calvert, Chairman of this Subcommittee, and I welcome everyone here today who has taken valuable time to listen and educate others about their community's future. I also thank those who have helped set this hearing up and the Members joining me here today who have worked hard to find resolution on the complex issues we will hear about later.

Thirty years ago, Congress had the best intentions when it passed the Endangered Species Act.

In these 30 years, only 7 species out of 1300 listed have been "recovered" and those are mainly due to other species conservation laws. That means that Endangered Species Act has a success rate of .01% at best. But, at the same time, communities across the West are stopped cold in their tracks to the point where some legitimately wonder whether their way of life has become endangered. For instance, entire projects are suddenly scrapped in my district because of the Delhi Sands Flower-Loving Fly or communities and forests are needlessly torched because the Endangered Species Act wouldn't allow for thinning. We are all too aware of the impacts here.

Clearly, something isn't working. No one would ask you to buy 4 new tires for an old car that doesn't run. But, in its current form, that's what the Endangered Species Act is really doing: pouring more money into a broken, tired program and creating more economic hardships for those already caring for their land and experiencing record drought. In the meantime, though, it's lining the pockets of a very few, vocal special interest groups using litigation as a way to achieve their goals.

Today represents an historic opportunity to right the wrongs of the past and bring about positive change for the benefit of the American people and wildlife. We can bring the Endangered Species Act into the 21st Century while helping communities in the Klamath Basin have economic and water certainty. We have already found here—through peer-reviewed, independent science—that more water for fish doesn't necessarily mean more fish protections. I just hope we're utilizing that science to its fullest extent.

There's no reason why we can't require—by law—independent, peer reviewed science for every major aspect of the Endangered Species Act and use that science to make the best-informed decisions in the decision-making process. This is not a new idea for other federal agencies—they do it on a daily basis. Everyone should support this effort if they truly care about protecting and recovering endangered species.

Today's hearing—like our hearing in 2001—is a giant, results-oriented leap forward in this march. Next week, we continue when the Resources Committee meets to pass bills—including Mr. Walden's bill—that will bring the Endangered Species

Act out of the “old school” way of thinking. We owe you—who have to live with the Endangered Species Act everyday—nothing less.

STATEMENT OF THE HON. GEORGE RADANOVICH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. RADANOVICH. Thank you, Mr. Chairman, and it's a real pleasure to be here in Greg Walden's congressional district. I just wanted to say to the people of the Klamath Basin, I'm from California, in the Yosemite and Central Valley part of California, but I do have to say that the experience that you've experienced has been really the best example of the need for modification and change to the Endangered Species Act, because what has happened to you, to me, has just been inexcusable. And I look forward to learning from the panel today and through the results of this hearing more ways in which we can encourage people to work together, rather than be divisive, to meet the needs of the environment, but also not put at risk the economy of your community. So with that, I won't go on any longer, because frankly, I left my opening statement in the airplane, but I'm looking forward to the testimony and hope that we'll all learn a lot from this. Thank you, Mr. Chairman.

Mr. CALVERT. We'll leave the hearing record open to make sure we can submit your full record.

Mr. RADANOVICH. Thank you; I appreciate it.

Mr. CALVERT. I'd now like to recognize Mr. Herger for his opening statement.

STATEMENT OF THE HON. WALLY HERGER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. HERGER. Thank you very much, Mr. Chairman, and again I want to thank you for convening this incredibly important hearing here in the Klamath Basin. And while the Oregon side of the Klamath Basin is represented so well by Congressman Walden, the California side is represented by Congressman Doolittle and myself.

And I'd like to take a moment, Mr. Chairman, if I could, to read a very brief letter from a young man named Blake Bettendorf. He's from Tulalake. And I can't see into the crowd, but I believe Blake is with us today. And if he is, maybe he'd stand. I'm not sure where he is. But anyway, he—Blake was 8 years old when he wrote me this letter in the wake of the tragic 2001 water shutoff. He's probably 11 today. As you can see, it was written on second grade stationery. On the back he drew a nice picture of a tractor farming in the field.

And this is what his letter said, dated 4/12/01. “Dear Congressman Herger, I have farmed all my life. I want to do it more than 8 years. I love crops and fields. Please help us. People count on us. The stores do too. So they really need us.” And it's, “Second grade, your friend, Blake.”

Mr. Chairman, Blake is the poster child for what is at stake here. This young man is the face of agriculture in the Klamath Basin. His future and the future of every man and woman in this community hangs in the balance. This is why we will continue to

fight. I want Blake to grow up knowing he has a future in this community.

While farmers have received water each year since the shutoff, and while they were vindicated by the National Research Council's report, this community remains at risk. Therein lies our most important message. Nothing has changed. Water deliveries are tenuous, agriculture continues to face demands for water, devoid of any scientific basis, lenders are skittish, families have left. These people are living day to day. They cannot continue like this. We need certainty.

We will hear today from respected scientists that this tragedy should never have happened. The NRC said, "There is insufficient scientific or technical justification," for the high lake and reservoir levels. In other words, the science from the 2001 is fundamentally wrong, yet it continues to drive decisionmaking. That must end. The biological opinions must be changed to reflect the best science, and farmers need firm assurances that they will be involved.

The water bank must be done away with. It was supposed to be an interim solution as storages developed and the best science was incorporated. Instead, it has placed additional demands on farmers and instituted more land idling. Mr. Chairman, this water bank is harming agriculture. We need to be vigorously pursuing water storage opportunities. Congress passed legislation in 2000 directing the Bureau to do just that. Here we are today, however, nearly 4 years later, and I have not heard a word to indicate positive movement forward. We need the committee's help to get the Bureau off the dime and push these critical storage studies forward with the urgency they demand.

As we reflect back on and hear testimony today about the tragedy of 2001 and the lingering economic effects, let me repeat this critical message: The reason why we're here, despite some positive developments, nothing has changed. Much remains to be done. We urgently need the committee's help using the fresh air the NRC report provides to take the positive steps that will create water supply certainty and restore a stable economic future for Blake in this community. Thank you, Mr. Chairman.

[The prepared statement of Mr. Herger follows:]

**Statement of The Honorable Wally Herger, a Representative in Congress
from the State of California**

Mr. Chairman, I'd like to take a moment to read a very brief letter from a young man named "Blake Bettendorf." He's from Tulelake.

April 12, 2001

Dear Congressman Herger,

I have farmed all my life. I want to do it more than 8 years. I love crops and fields. Please help us! People count on us. The stores do too. So they really need us.

2 grade, Your friend,

Blake

Blake was 8 years old when he wrote this letter to me in the wake of the tragic 2001 water shut off. He's probably 11 today.

Mr. Chairman, Blake is the poster child for what is at stake here. This young man is the face of agriculture in the Klamath Basin. His future—and the future of every man and woman in this community—hangs in the balance. This is why we will continue to fight. I want Blake to grow up knowing he has a future in this community.

While farmers have received water each year since the shutoff, and while they were vindicated by the National Research Council's report, this community remains at risk. Therein lies our most important message: Nothing has changed. Water de-

liveries are tenuous ... agriculture continues to face demands for water devoid of any scientific basis ... lenders are skittish ... families have left. These people are living day to day. They cannot continue like this. We need certainty.

We will hear today from respected scientists that this tragedy should never have happened. The NRC said, "there is insufficient scientific or technical justification" for high lake and reservoir levels. In other words, the "science" from 2001 is fundamentally wrong. Yet, it continues to drive decision making. That must end. The Biological Opinions must be changed to reflect the best science. And farmers need firm assurances that they will be involved.

The "water bank" must be done away with. It was supposed to be an interim solution as storage is developed and this best science incorporated. Instead, it has placed additional demands on farmers and instituted more land idling. Mr. Chairman, this "water bank" is harming agriculture.

We need to be vigorously pursuing water storage opportunities. Congress passed legislation in 2000 directing the Bureau to do just that. Here we are today, however, nearly four years later, and I have not heard word one to indicate positive movement forward. We need the Committee's help to get the Bureau "off the dime" and push these critical storage studies forward with the urgency they demand.

As we reflect back on and hear testimony today about the tragedy of 2001 and the lingering economic effects, let me repeat this critical message—the reason why we're here: despite some positive developments, Nothing has changed. Much remains to be done.

We urgently need the committee's help, using the "fresh air" the NRC report provides, to take the positive steps that will create water supply certainty and restore a stable economic future for Blake and this community.

Thank you.

Mr. CALVERT. Thank you, gentleman. I would now like to recognize Mr. Doolittle for his opening statement.

STATEMENT OF THE HON. JOHN T. DOOLITTLE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. DOOLITTLE. Mr. Chairman, thank you. You have a full copy of my opening statement, and I will not go over that at this time. I will simply say that I'm delighted to be here with my colleagues. I thank you especially, Mr. Chairman, for convening this field hearing.

I think this is a very important opportunity for us to hear from the experts as to what needs to be done to improve the Endangered Species Act, but also I hope, as one of the area's representatives, that we will find a solution that will meet the needs of all the stakeholders. It's my belief that probably more water needs to be added to the system as a way to bring the certainty that Mr. Herger was speaking of, as a way to resolve a lot of the problems that we have here.

This Klamath Irrigation Project has been, I think, unfairly criticized. It's one of the great Federal reclamation projects in the United States, one of the earliest ones. Nevertheless, it's not without problems, as we've come to realize over the years, as certain major deterioration has occurred to fisheries and brought about undesirable conditions. I think that we hold the ability to identify solutions to remedy some of those problems.

I support very strongly the right of the people in this basin to the livelihood that they're accustomed to having. I know that we have a great division of interest, say between the Tribes and the farmers.

I would hope that a solution could be developed that would treat all parties equitably and would actually do something to resolve the problems rather than just to simply be a constant source of di-

vision and discord and frustration, such as it seems to have been over the past few years.

We have made strides in other areas farther down south in our district. We were able to come to terms with a solution after years and years of disagreement. These issues affecting us here, I would submit, are more complex and perhaps more intractable, but I think we're people of good faith working together toward a common end, much can be accomplished. So it is in that spirit I hope we will hold this hearing, and I thank you again for the opportunity to be here and to draw focus to what is really a very, very serious set of problems in this region.

[The prepared statement of Mr. Doolittle follows:]

**Statement of The Honorable John T. Doolittle, a Representative in
Congress from the State of California**

Good morning, Mr. Chairman. I want to thank you for honoring the request made by Congressman Herger, Congressman Walden and me to conduct this important field hearing in Klamath Falls, Oregon. I would also like to thank those who are here to testify today and the many individuals who have continued to fight for responsible environmental policy that encourages collaboration and community stability, not conflict and uncertainty.

As you know, I am honored to represent the communities made up of hard working people in Modoc County, California. For generations, the citizens of this county and nearby counties in Oregon, California, and Nevada have cultivated a great appreciation and respect for the natural resources of this landscape and the wildlife that shares it. These communities have worked and continue to work hand in hand with federal and state agency officials in an effort to maximize the potential of these vast resources. Unfortunately, these award-winning efforts and leadership roles have yielded little benefits when faced with the rigid, outdated, and unsuccessful Endangered Species Act (ESA). Communities that once supported dozens of timber mills and raised tens of thousands of domesticated livestock now watch in horror as the ESA threatens to cripple a third industry, that of irrigated agriculture. We cannot stand by and let this happen. It is my hope that this House Water and Power Subcommittee Field Hearing (Hearing) will reverse the chain of events that have brought us to this unfortunate place and serve as a catalyst for amending the ESA to make it a better and more effective law while respecting the rights and interests of communities and property owners.

From spotted owls, frogs, beetles, fish, and even soils and plants, my constituents have suffered extreme difficulties as a result of ESA mandates. In addition, the taxpayer has borne the cost of this excessive law and the expensive and time consuming burdens it places on vital local endeavors ranging from levee construction to road building to farming. However, the costs have never been so high as they are in the Klamath Basin (Basin). From lost crops in 2001 to the cold feeling of uncertainty with regards to water supplies, ESA requirements and the haphazard implementation of programs designed to "benefit" species have taken a dramatic toll on the economies and social well-being of these farming communities. I find it both ironic and disheartening that the very communities besieged by this process are ones that were started by men and women who sacrificed the most for our country. For those who may not know it, the Klamath Irrigation Project (Project) was settled by veterans of World War I and World War II and built on the federal government's promise of a reliable water supply for crops in perpetuity. These patriots could have never imagined that the most serious and threatening foe to their way of life and that of their children and grandchildren would not end up being the Japanese, Germans, or Russians, but their own government and its misguided policies manipulated through the judicial system by environmental zealots and extremists.

I believe the original homesteaders would be proud of the way the communities they started have responded to the injustices brought on by the ESA. For the last ten years Project farmers have advocated solutions that will bring benefits to fish and birds as well as to sustainable agriculture. Project farmers have entered into voluntary agreements that have improved habitat for suckers, enhanced fish passage capabilities, restored wetlands, improved water quality, and bettered already impressive water-efficient agricultural practices. In addition, farmers agreed to early shutdowns in 1992, 1994, and 2000 in an effort to conserve water for environmental purposes. To this day, they pump valuable groundwater with minimal or no

compensation. Project farmers have been leaders in developing and encouraging new water storage capabilities and participated in innovative partnerships with Klamath Wildlife Refuge Managers and officials from every stakeholder group that offers a fair and open mind. I am pleased to see that these efforts have been recognized with recent awards and accolades. The Klamath Water Users Association (KWUA) recently accepted two awards on behalf of its members: a 2003 Oregon Leader in Conservation Award and an award for contributing to the goals of the Oregon Plan for Salmon and Watersheds. In addition to these tributes, the Tulelake Irrigation District was granted the F. Gordon Johnston Award at the Mid-Pacific Water Users Conference in recognition of its innovative canal lining project. Finally, the Basin is now home to a national "Excellence in Conservation" award as determined by the Natural Resources Conservation District. Mike Bryne, a rancher and farmer in Tulelake, was given this prestigious award for his leadership in arranging and encouraging conservation measures on private land. Clearly, these efforts are not driven by greed or by a desire to manipulate and degrade the environment, but rather by fervent respect and love for the land that supports these communities and produces commodities American citizens take for granted every day. Project farmers understand that the great benefits bestowed from the land come with great responsibility for its sustainability and vibrancy. They have accepted this responsibility and have excelled in implementing projects beneficial to the entire watershed, sacrificing their own time and financial resources.

While the leadership efforts of farmers have recently received high praise and appreciation from officials in Salem and Washington D.C., these efforts have not lessened the burdens imposed by a bloated and divisive water bank affecting Project farmers and by the failure to incorporate the best available science into flow regimes for the Klamath River and lake levels for Upper Klamath Lake.

I insist that the objective science and recommendations published recently by the National Research Council (NRC) regarding endangered and threatened fishes in the Klamath River Basin be implemented by the federal agencies having jurisdiction in this matter. A brief examination of this report yields many useful facts, smartly pointing out that the recovery of threatened coho and endangered suckers will demand a watershed-wide approach and will not be solved by the valiant efforts of farmers and ranchers that make up a mere two percent of the entire watershed. Additionally, flaws in the underlying science and assumptions guiding agency decisions were questioned and a whole host of insightful and easily-implemented recommendations were made. Perhaps most striking was the report's finding that Project operations were not responsible for the 2002 fish die-off 200 miles downstream on the Klamath River. Also of note was its sharp rebuke of the methods and findings of Dr. Thomas Hardy. We are here today to highlight these aspects of the report and to find the most effective way to incorporate the findings into the biological opinions governing species recovery and Project operations.

It has been said that great challenges present great opportunities. That is the situation we are all faced with in the Basin. Project farmers have done more than just talk about conserving resources and promoting environmental health, they have implemented worthwhile projects on the ground while weathering unconscionable uncertainty regarding the water that supports their livelihoods and sustains their communities. They have stepped up to the challenges presented to them, and it is time that the federal government recognize these efforts and move to incorporate the recommendations contained in the NRC report as well as other initiatives that will benefit users throughout the watershed.

Mr. CALVERT. Thank you. Gentleman's full statement will be entered into the record without objection.

I would now like to recognize our witnesses today, and they are Mr. Dave Carman, Chico, California; Mr. Carman is accompanied by Mr. Venancio Hernandez; Mr. David Vogel, Natural Resources Scientist, Incorporated, Red Bluff, California; The Honorable Doug LaMalfa, Assemblyman, 2nd District, California; Mr. Troy Fletcher, Klamath River Inter-Tribal Fish and Water Commission representative; Mr. Fletcher is accompanied by Mr. Allen Foreman, Chairman of the Klamath Tribes; The Honorable Ralph Brown, Vice-Chair, Curry County Board of Commissioners, Gold Beach, Oregon; Mr. Bill Gaines, Director of Government Affairs, California Waterfowl Association, Sacramento, California; The Honorable

Jimmy Smith, Supervisor, Humboldt County Board of Supervisors, Eureka, California; Dr. William M. Lewis, Jr., Chair, Committee on Endangered and Threatened Fishes in the Klamath River Basin, University of Colorado, Boulder, Colorado; Mr. Kirk Rodgers, Regional Director, Mid-Pacific Region, Bureau of Reclamation; Mr. Rodgers is accompanied by Mr. Steve Thompson of the Fish and Wildlife Service and Mr. Jim Lecky, National Marine Fisheries Service.

Now, before I recognize Mr. Carman to begin, I would like to explain to all our witnesses, since we have a number of witnesses, that we have a little clock up here. It's a 5-minute clock. And what that means is, is that when the green light is on, that means that there's 4 minutes have gone by. When the yellow light is on, that means hurry up, just like going through the—and finish your statement, because we're going to stick to the 5-minute rule today, because that allows us a little more time to ask questions, because we're going to go through all of your opening statements first, and then get into questions.

And so with that I would like to recognize Mr. Carman to begin his testimony.

**STATEMENT OF DAVE CARMAN, CHICO, CALIFORNIA;
ACCOMPANIED BY VENANCIO HERNANDEZ**

Mr. CARMAN. Thank you, Mr. Chairman. As you said, I am accompanied by Mister—

Mr. CALVERT. I think your mike isn't on, or not close enough.

Mr. CARMAN. Is that taking off of my time?

Mr. CALVERT. I don't think it's on. Is there a little switch on that? We've got some technical help coming here. I think you have to be very close to the mike, sir. Get closer.

Mr. CARMAN. Are we coming through?

Mr. CALVERT. I don't know. Are we coming through to the audience? We got our aid audio guy on it right now. Hold on. We're going to old technology here, put a wire in it.

Mr. CARMAN. Now what.

Mr. CALVERT. There you go. We're ready. You're recognized for 5 minutes.

Mr. CARMAN. Thank you, Mr. Chairman. As I said, I'm accompanied by Mr. Venancio Hernandez.

Mr. Chairman and Members of the Committee, my name is Dave Carman, and I am a World War II combat veteran and homesteader. My presence here today is to represent the veteran homesteaders. I would like to begin my testimony with an excerpt from *Americans at War*, by Steven Ambrose.

"From beginning to end, the Japanese American War in the Pacific was waged with a barbarism and a race hatred that was staggering in scope, savage almost beyond belief, and catastrophic in consequence. Each side regarded the other as subhuman vermin. They called each other beasts, roaches, rats, monkeys, and worse. Atrocities abounded, committed by individuals, by units, by entire armies, by governments. Quarter was neither asked nor given. It was a descent into hell."

I was born in 1918 in L.A., California. I joined the United States Army in 1941. When Pearl Harbor was attacked, I was stationed

at Fort Jackson, South Carolina. As a 1st Lieutenant of the 7th Amphibious Infantry Division, our first amphibious landing was in the Aleutian Islands. This was followed by Kwajalein Island, where we engaged approximately 5,000 enemy soldiers. We landed on February 1st, and by the next evening, the operation was complete. We took no prisoners. Our next amphibious landing was Leyte Island during the retaking of the Philippines, where General MacArthur made his famous remark, "I have returned." The life expectancy of a lieutenant infantryman was seven and a half minutes. I left all my best friends; I survived. Why, I don't know. We don't know those things.

After 4 years and 8 months of service, I came home with the rank of 1st Lieutenant. When I heard about the homesteading opportunity in Tulelake, California, I applied. In 1948 I was one of 44 applicants chosen out of 2,000. At the time I had never heard of Tulelake, except as a great hunting area. When I arrived to see my homestead, there was nothing there, just an expanse of opportunity.

No roads, no houses, no trees, just bare ground. I then pitched my tent in the corner of my homestead. My wife, Eleanor, was expecting our second child, could not join me until later. A tent was not acceptable living quarters for a young woman, a small child, and another baby on the way.

When I began my new life as a Tulelake homesteader, there were approximately 300 homesteaders, most of them with families. We united and began to build schools, churches, and a hospital in Klamath Falls. We started a community. We were living the American dream, and our dream was achieved by hard work and dedication. And I must say, we could never have done this without our wives.

In 1957 we formed our own irrigation district, taking over from the U.S. Bureau of Reclamation. In 1967 we paid off our portion of the Klamath Project debt to the Federal Government, and the irrigation district became totally ours.

In closing, I want to say we fulfilled the American dream, and in 2001 the Endangered Species Act came very close to destroying our dream. Our dream was changed into a nightmare. We now know that the water cutoff was not justified.

In my hand I have a patent for a homesteader signed by President Franklin D. Roosevelt, given to a veteran of World War I. This document guarantees the right to use water from the Klamath Reclamation Project by a homesteader and his heirs forever. I would like to remind everyone that our children learned farming from us.

They are homesteaders in the same regard, just as we were after World War II. Excuse me.

Our community has become the poster child of abuse by the Endangered Species Act. I respectfully request that the members of this Congressional Committee never allows us to be betrayed by an Act that has become a tool to destroy rural America. I thank you.

[The prepared statement of Mr. Carman follows:]

**Statement of David Carman, Tulelake, California,
on behalf of the Veteran Homesteaders**

Mr. Chairman and members of the committee:

My name is David Carman and I am a World War II Combat Veteran and Homesteader. My presence here today is to represent the Veteran Homesteaders. I would like to begin my testimony with an excerpt from *Americans at War* by Stephen Ambrose: "From beginning to end the Japanese-American war in the Pacific was waged with a barbarism and race hatred that was staggering in scope, savage almost beyond belief, and catastrophic in consequence. Each side regarded the other as subhuman vermin. They called each other beasts, roaches, rats, monkeys and worse. Atrocities abounded, committed by individuals, by units, by entire armies, by governments. Quarter was neither asked, nor given. It was a descent into hell."

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Our community has become the poster child of abuse by the Endangered Species Act. I respectfully request that the members of this congressional committee never allow us to be betrayed by an Act that has become a tool to destroy rural America.

Mr. CALVERT. Thank you. Thank you, Mr. Carman. Thank you for your statement. Thank you for your service.

Mr. CARMAN. Thank you.

Mr. CALVERT. Next I am privileged to represent—recognize Mr. Vogel. Mr. Vogel, you're recognized for 5 minutes.

STATEMENT OF DAVID VOGEL, NATURAL RESOURCE SCIENTISTS, INC., RED BLUFF, CALIFORNIA

Mr. VOGEL. Mr. Chairman and other Congressional members, my name is David Vogel. Thank you for the opportunity to testify today. I'm a fishery scientist with 29 years of experience and have served as a science advisor to Klamath Project water users for the past 12 years. Today I'll be summarizing two topics that are further detailed in my written testimony.

The first point refers to the double standard used by the fishery agencies in implementing the ESA. In 1988 it was assumed that the suckers would be extinct in just a few years. That population crisis never materialized. Either mistakes were made on the assumed population status or the sucker populations have demonstrated a remarkable improvement. I believe it was a combination of both. The suckers are now conclusively known to have much greater numbers, reproduction, and distribution than originally reported. Although this is indisputable, empirical, and positive evidence, current implementation of the ESA does not provide the flexibility to downlist or delist the species. The process and rationale to list a species should not be held to a different standard for delisting. The science on the suckers evolved with beneficial new information, but the Fish and Wildlife Service's application of the ESA did not. Despite the so-called ecosystem approach to recovery, advocated by Federal agencies, their action showed otherwise. In fact, the exact opposite took place. They focused on single-species management and Klamath Project operations.

In 1988 the Klamath Project was not identified as having known adverse effects on the sucker populations. Yet, 4 years later, using limited or no empirical data, the Service turned to the Klamath Project as their singular focus. Paradoxically, since the early 1990s, despite an abundance of scientific evidence on the species' improvement and lack of relationship with Klamath Project operations, the agency increased restrictions on irrigators. This circumstance caused tremendous expense by diverting valuable resources away from other known factors affecting the fish.

A similar occurrence occurred with NOAA Fisheries during and after the coho salmon listing. The Klamath Project was not identified as a significant factor causing declines in coho. But shortly thereafter and with no supporting data, the agency chose to center its attention on the Klamath Project as the principle factor. Both agencies adopted a single-minded approach of targeting the Klamath Project. What compelling empirical scientific data would cause a broad-spectrum approach for species recovery to rapidly shift into a narrow, singular attack on project irrigators?

The bottom line on the ESA double standard is this: The standard to list a species is vastly different than delisting a species, and what agencies say they will do at the time of listing is radically different after listing. The public was misled.

Now for the good news. My second point today pertains to the outstanding benefits provided by the NRC's final report. It's a long-overdue breath of fresh air. This outstanding effort and product must serve as a catalyst for balanced natural resource management and get our collective goals back on track. After reading the report, the benefits of an ESA peer review become obvious. The report advocates a watershed approach, peer review, stakeholder involvement, focus on other factors in adaptive management actions. Notably these recommendations were not new to the two agencies. We have reported much of the same information to those agencies over the past decade but were importantly largely ignored.

We are beginning to see signs of progress in the basin.

However, there are some individuals in a state of denial over the NRC report. The agencies still have too much focus on the Klamath

Project. Instead, attention should return to a watershed approach and other more creative and inclusive methods of satisfying the ESA. If Federal agencies meaningfully incorporate many of the NRC's recommendations, we fully expect positive results. However, if the agencies ignore it, we could again return to the disaster that transpired in 2001. The manner in which the ESA is administered in the Klamath Basin must change, or the species may never be delisted. This would not be a result of biological reasons, but of procedural inconsistencies with the ESA.

In conclusion, science is constantly evolving based on new information. Why shouldn't the ESA also evolve and adapt based on lessons learned, such as those in the Klamath Basin? Thank you.

[The prepared statement of Mr. Vogel follows:]

**Statement of David A. Vogel, Senior Scientist,
Natural Resource Scientists, Inc.**

INTRODUCTION

Mr. Chairman and other Congressional members, my name is David Vogel. Thank you for the opportunity to testify at this important hearing. I am a fisheries scientist who has worked in this discipline for the past 29 years. I earned a Master of Science degree in Natural Resources (Fisheries) from the University of Michigan in 1979 and a Bachelor of Science degree in Biology from Bowling Green State University in 1974. I previously worked in the Fishery Research and Fishery Resources Divisions of the U.S. Fish and Wildlife Service (USFWS) for 14 years and the National Marine Fisheries Service (NMFS) for 1 year. During my tenure with the federal government, I received numerous superior and outstanding achievement awards and commendations, including Fisheries Management Biologist of the Year Award for six western states. For the past 14 years I have worked as a consulting scientist on behalf of federal, state, and county governments, Indian tribes, and numerous other public and private groups. During my career, I have been extensively involved in Endangered Species Act (ESA) issues including research on threatened and endangered species, listing of species, Section 7 Consultations, Biological Assessments, Biological Opinions, and recovery planning. I was a principal author of the original 1992 Biological Assessment for the Klamath Project and served as a peer reviewer for both of the National Research Council (NRC) Klamath Committee's reports. I have worked as a scientific consultant for the Klamath Water Users Association (KWUA) for the past 12 years.

I would like to bring to your attention several points highly relevant to the purpose of this hearing. The details of my testimony are encompassed by two main topics:

- 1) A serious problem with inconsistent application of ESA science
- 2) The benefits of the recent NRC's review of the Klamath situation

INCONSISTENT APPLICATION OF ESA SCIENCE IN THE KLAMATH BASIN
(THE PROBLEM OF ESA DOUBLE STANDARDS)

While conducting my research, I uncovered some very troubling information relating to the original listing of the suckers as endangered in 1988. A chronology of events leading up to and following the listing reveals disturbing evidence that should serve as a wake-up call in order to avoid future ESA problems similar to those experienced in the Klamath basin. As you will see, we have learned from the Klamath situation that: 1) the standard to list a species is greatly different than the standard to delist a species; and 2) what the federal agencies claim they will do at the time of species listing (ecosystem approach) can be dramatically different after listing (narrow, singular focus). The following are just some representative examples, although many others exist.

Sucker Population Estimates

The most compelling and prominent reason why the federal government justified listing the two sucker species as "endangered" in 1988 was an apparent abrupt downturn in both populations during the mid-1980s. At that time, the sucker population declines were characterized as precipitous (Federal Register, Vol. 53, No. 137), alarming (USFWS 1987), drastic (Williams 1986), shocking (Bienz 1986), dramatic, and a crisis (Kobetic 1986a). In 1986, the Klamath Tribes believed that both

species would become extinct by 1991 without immediate action (Kimbol 1986). At the same time, the Bureau of Indian Affairs (BIA) suggested the shortnose suckers would be extinct in just a few years (BIA 1986). In 1987, a USFWS report stated that the consensus of opinion was: "shortnose suckers are in danger of dying out in the next several years" (Williams 1987). In 1984, the Upper Klamath Lake population of shortnose suckers was estimated at 2,650 fish and in 1985 too few fish could be found to estimate the population size. The estimated Lost River sucker population was 23,123 fish in 1984 and 11,861 fish in 1985 (Federal Register, Vol. 53, No. 137). In the Lost River watershed, it was assumed (incorrectly) that only a small population of Lost River suckers were present and that the shortnose suckers had so extensively hybridized, their populations were discounted as contributing to the species (Kobetich 1986a, Federal Register, Vol. 53, No. 137). To support the decision to list the suckers, the USFWS believed the only significant remaining populations were in Upper Klamath Lake. We now know that the assumptions by the USFWS were in error and the assumed sucker population crisis never materialized. In fact, shortly after listing of the species, the populations demonstrated dramatic increases.

The estimates used to justify an extremely low population in the 1980s were based on a very limited, inappropriate technique and exceptionally small sample size, but was deemed adequate by the USFWS to support listing the species. However, more than a decade later, with a much more valid, sophisticated technique and extremely large sample sizes that amply demonstrated very high sucker populations, the new method was deemed by the USFWS as unsuitable for use in delisting. Displaying a striking inconsistent application of ESA science in its recent decision not to accept a delisting petition, the USFWS concluded, "Comparisons between current estimates and those made during the fishery, prior to its termination in 1987, are not informative due to extreme differences in methodology. Population estimates made since listing, while numerically higher than earlier estimates, show no overall trend for increasing populations within the last decade." (Federal Register, Vol. 67, No. 93). The science on the suckers evolved with beneficial new information, but the USFWS's application of the ESA did not.

One of the most revealing statements demonstrating a conflicting use of the ESA is provided by the USFWS in a 1986 internal memorandum. At that time, the USFWS believed that there were only about 12,000 Lost River suckers in Upper Klamath Lake and that suckers elsewhere were hybridized or simply small, remnant populations. Yet given those circumstances, the USFWS concluded: "We have chosen not to pursue listing of the Lost River and Klamath largescale suckers at this time because of their larger population sizes and broader distribution" [compared to the shortnose suckers] (Kobetich 1986a). It is apparent the agency flip-flopped its standard for "endangered" status because by the mid-1990s, it was determined that the Lost River suckers greatly exceeded the original 12,000 population by tens of thousands of fish and were found over a greater geographic area, yet the species remained "endangered".

Sucker Recruitment

The lack of significant recruitment of both species was considered by the USFWS as a convincing reason to list the species as "endangered" in 1988, suggesting that neither species of sucker had spawned successfully in Oregon for approximately 18 years (Federal Register, Vol. 53, No. 137, citing Scopettone 1986). Conversely, it is now evident that the Upper Klamath Lake sucker populations have gone from assumed little or no recruitment in the approximate 18 years prior to listing, to recruitment in every year including substantial recruitment in some years (NRC 2004). Based on data collected during the 1990s, we now know the USFWS's assumptions on sucker recruitment were flawed.

Harvest of Suckers

Just prior to the listing of the suckers in 1988, a sport snag fishery was allowed. Before 1969, the fishery was largely unregulated with no harvest limit; in 1969 a generous bag limit of 10 fish per angler was imposed (Golden 1969). During the early to mid-1980s, despite the belief that the numbers of fish were in a state of rapid decline, the State of Oregon still allowed the sport snag fishery. Ultimately, because of increased focus on the status of the sucker populations, Oregon eliminated the fishery in 1987. What is particularly interesting about this circumstance is that written records indicate that none of the involved individuals at the time believed that the annual sport harvest of thousands of suckers on their spawning grounds was a significant factor contributing to the declines in the populations (e.g., Andreason 1975). In 1986, the USFWS concluded, "Loss of fish to the snag fishery does not appear to have a causal factor in the decline." (Kobetich 1986a) and "Fish-

ing does not appear to be a significant threat for any of the suckers.” (Kobetic 1986b). However, an examination of historical records demonstrates that the harvest of suckers was extensive (Cornacchia 1967, Golden 1969). The first detailed description explaining how and why the snag fishery caused significant harm to the sucker populations was provided by Vogel (1992). More recently, the NRC Klamath Committee came to the same conclusion (NRC 2004). If the USFWS would have properly assessed the known impacts on the suckers caused by the snag fishery and the benefits from ceasing the fishery, it very likely could have affected the ultimate listing decision.

Simply stated, the largely unregulated snag fishery slaughtered the sucker populations. Since the fishery was eliminated in 1987, the two sucker populations dramatically rebounded. The threat was removed and the populations increased ten-fold. But unlike the rationale to originally list the species, the current inflexibility of the ESA will not account for that major beneficial effect.

Species Distribution

As stated earlier, the USFWS essentially discounted the Lost River suckers in the drainage as a significant contribution to the species status because only a “small, remnant population” was present in Clear Lake. The shortnose suckers in the drainage were essentially written off because of purported extensive hybridization.

As soon as just three years after the sucker listing, it became evident that the USFWS’s assumptions on the status of shortnose suckers and Lost River suckers in the Lost River/Clear Lake watershed had been in serious error. Surveys performed shortly after the sucker listing found a substantial (reported as “common”) population of shortnose suckers in Clear Lake exhibiting a young age distribution (1-23 years) and young Lost River suckers (3-23 years old). Within California, the surveyors considered populations of both species as “relatively abundant, particularly shortnose, and exist in mixed age populations, indicating successful reproduction” (Buettner and Scopettone 1991).

The geographic range in which the suckers are found in the watershed is now known to be much larger than believed at the time the suckers were listed as endangered in 1988. For example, other than the abundant population of shortnose suckers found by surveys performed in Clear Lake just after the listing, it was reported in 1991 that shortnose suckers were found “throughout the Clear Lake watershed in the upper basin”. It was also reported that “there may be a substantial population” of Lost River suckers in Clear Lake (Buettner and Scopettone 1991). Since the 1991 report, shortnose suckers have also been found at Bonanza Springs, Anderson-Rose Dam, and Tule Lake; Lost River suckers have been found at the latter two locations. Recent population estimates for suckers in the Lost River/Clear Lake watershed indicate their numbers are substantial and that hybridization is no longer considered a significant issue (NRC 2004). Tens of thousands of shortnose suckers, exhibiting good recruitment, are now known to exist in Gerber Reservoir.

Had it been known, these major findings undoubtedly would have had a significant influence on the listing decision. Again, unlike the rationale used to list the species, the inflexibility of the ESA has not accounted for this major improvement to fish distribution throughout the watershed.

The USFWS and NMFS Singular Focus on the Klamath Project

The Endangered Species Act of 1973 states: “The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved”. Despite the so-called ecosystem approach to species recovery advocated by the USFWS and NMFS, their actions in the Klamath basin over the past decade amply demonstrates that the exact opposite took place. They focused on: 1) a single-species approach; and 2) Klamath Project operations.

At the time of the listings in 1988, the Klamath Project was not identified as having known adverse effects on the sucker populations, yet four years after the listing, using limited or no empirical data, the USFWS turned to the Klamath Project as their singular focus. Paradoxically, since the early 1990s, despite new beneficial empirical evidence on the improving status of the species and lack of relationship with Klamath Project operations, the USFWS became ever more centered on project operations and increased restrictions on irrigators instead of paying attention to more obvious, fundamental problems for the species. This circumstance caused tremendous expense in dollars and time by diverting resources away from other known factors affecting the species.

In 1987, the USFWS published a notice in the Federal Register soliciting comments on the proposed listing of the two suckers as endangered species. No public hearing was requested or held, probably because the USFWS did not identify Klam-

ath Project operations as affecting the species. For the most part, the listing was innocuous. Only 13 written comments were received, with none opposed to the listing. Only two private parties responded; the rest of the comments in support of the listing came from government agencies, an Indian Tribe, and environmental organizations. Numerous documents prior to the sucker listing made it evident that the USFWS would not focus on the Klamath Project. If the suckers were proposed for listing today, it would be interesting to note how many individuals would oppose it knowing the scientific facts that the last 16 years have produced; particularly if the USFWS would have revealed that it was going to focus its attention on Klamath Project operations.

A similar circumstance occurred with NMFS during and after the coho salmon listing in the lower basin. It cited the reasons to list coho salmon, excluding Klamath Project operations as a significant factor affecting the species. However, shortly following the listing, and with no supporting data, NMFS chose to center its attention on the Klamath Project as the principal factor affecting coho salmon. Both agencies adopted a single-minded approach of focusing on Klamath Project operations to artificially create high reservoir levels and high reservoir releases. This puzzling, similar sequence of events has yet to be explained by agency officials. What compelling, empirical scientific data would cause a broad-spectrum approach for species recovery to quickly turn into a narrow, singular attack on Klamath Project irrigators?

Based on what was learned in the Klamath basin, what the agencies say they will do at the time of a listing and what they end up doing after the listing are radically different. These problems have continued well after the sucker and coho listings. Now that the independent NRC report has been published, hopefully, this unbiased and balanced document will put things back on track toward a more holistic approach. The fact remains, despite the ESA mandate, the USFWS and NMFS did not use an ecosystem-based approach for species recovery.

THE NRC'S KLAMATH REPORT

As an individual who has been extensively involved with ESA technical issues in the Klamath basin for more than a decade, I can tell you that the NRC's final report is a long-overdue breath of fresh air for the basin. For reasons now clearly evident, our original recommendation for an outside technical review of the ESA activities in the Klamath basin by an objective group such as the National Academy of Sciences back in 1993 (KWUA 1993) was an important first step. The benefits of an ESA peer review are obvious after reading the NRC's final report.

The NRC Klamath Committee and the NRC staff should be commended for a job well done. Despite intense efforts by some agencies and individuals, the NRC Committee did not succumb to "peer pressure science" to derive their conclusions. Science needs open dialogue and debate, not the animosity and close-mindedness that some isolated individuals and groups have generated in the basin.

We are beginning to see signs of progress with ESA activities in the basin. However, alarmingly, there are some individuals within the agencies that are in a state of denial over the findings and conclusions of the NRC's report. This is evident, for example, when you examine the recent NOAA Fisheries revised incidental take statement for the Klamath Project Biological Opinion. The agency did not mention or incorporate the pertinent findings of the final NRC report and continued to cite non-peer reviewed draft reports to form their "opinions". Also unfortunately, there appears to be a disturbing mindset and trend among some groups to spend time and funds unnecessarily on litigation when it comes to ESA issues. That approach will stifle the scientific advancement of species recovery. These two circumstances should not be allowed to occur. Despite the NRC's final report, the USFWS and NMFS still have too much focus on the Klamath Project (as indicated from recent Biological Opinions) and not enough emphasis on a watershed-wide approach. The NRC final report should serve as the primary mechanism to get the Klamath situation back on track toward species recovery and reduction of resource conflicts. The agencies need to begin focusing on other factors affecting the species and other, more creative and inclusive methods to satisfy the ESA statute (NRC 2004).

It is very important to note that many of the most pertinent findings, conclusions, and recommendations of the NRC Klamath Committee were not new to the USFWS or NMFS. The NRC final report advocates a watershed approach, peer review, greater stakeholder involvement, oversight of agency actions, focus on factors other than the Klamath Project operations, reduction of resource conflicts, and incorporation of the principles of adaptive management toward species recovery. Over the past decade, I and others reported much of the same and similar technical findings and recommendations to those two agencies, but were mainly ignored (e.g., Vogel

1992, KBWUPA 1993, KBWUPA et al. 1994, KWUA et al. 2001, and comments by the KWUA on the USFWS and NMFS Biological Opinions). Additionally, the NRC's major conclusion that there is insufficient scientific justification for high reservoir levels and high instream flows was always prominent in our technical comments on the agencies' biological opinions during the past decade.

SUMMARY

Inconsistent Application of the ESA

In the Klamath basin, the science associated with the species evolved, but the ESA did not adapt or incorporate that science. At the time of the 1988 listing of the suckers as endangered species, the information on population status, geographic distribution, and recruitment was either in error or the sucker populations have demonstrated a remarkable improvement over the past decade. I believe it was a combination of both. The two sucker populations are now conclusively known to be much greater in size, demonstrating major increases in recruitment, and are found over a much broader geographic range than originally reported in the 1988 ESA listing notice. Despite this indisputable empirical evidence, current implementation of the ESA does not provide the flexibility necessary to downlist or delist the species. The process and rationale to list a species should not be held to a different standard for delisting a species. Additionally, despite the ESA mandate, the USFWS and NMFS did not use an ecosystem-based approach for species recovery and inappropriately focused their resources on the Klamath Project.

The NRC Klamath Report

The NRC Klamath Committee's final report was an outstanding effort and the product must serve as a catalyst to advance balanced natural resource management in the basin. If federal agencies meaningfully incorporate many of the NRC's principal findings, conclusions, and recommendations, we fully expect positive results to the species recovery and reduced resource conflicts. We should use the momentum of the NRC's final report to guide recovery efforts and watershed improvements. However, if the agencies do not take this pro-active approach, we could again return to the disaster that transpired in 2001. If the manner in which the ESA is administered in the Klamath basin does not change, it is unlikely that the species will ever be delisted. This circumstance would not be a result of biological reasons, but because of procedural problems with the ESA and its implementation.

Science is constantly evolving based on new research and information. Why shouldn't the ESA also evolve and adapt based on lessons learned such as those in the Klamath Basin?

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Mr. CALVERT. Thank you. I would now like to recognize Mr. LaMalfa, Assemblyman LaMalfa, for his testimony. You're recognized, sir, for 5 minutes.

**STATEMENT OF THE HON. DOUG LaMALFA, ASSEMBLYMAN,
2ND DISTRICT, CALIFORNIA**

Mr. LAMALFA. Thank you, Chairman Calvert and Members of the Committee, not only for allowing me to testify today, but for convening this hearing up here on such an important issue for the Klamath Basin and State of California and for our nation. I'm testifying today not only as the Assemblyman that represents the area, including Modoc and Siskiyou County, but as the Natural Resources Vice-Chairman for the Assembly in Sacramento, as well as a lifelong rice farmer who understands the vital need for water for producing crops, environmental stewardship, and for the survival of our rural communities.

This is not merely a struggle between environmentalists, local Tribes, farmers, and the government. I would like to specifically emphasize that farmers and ranchers are the strongest supporters of sound environmental stewardship and are committed to improving their businesses to meet environmental purposes. The agricultural community has a rich history of utilizing their land for open space preservation, watershed conservation, and wildlife habitat. The success of our agricultural industry as a positive partner for local wildlife habitat has not only been a huge success, but also a vital link in the chain between environmental stewardship and the

economy. This is a critical relationship that the ESA must recognize.

Water is the lifeblood of farming, and we must not minimize the importance of this ongoing controversy. Wrong decisions made here in the Klamath Basin can create a precedence with far reaching consequences. If a misapplication of a rule or regulation can suddenly and arbitrarily shut off the water here, it can happen anywhere in the nation. If that happens, farmers will not be the only ones in danger; our nation's food supply will suffer as well.

We need only look back on the oil embargoes of the '70s and the current spike in steel and concrete prices today, driven by actions of our rivals around the globe. They do not have America's best interests in mind. Do we want to depend on them for our food supply as well? Indeed, this morning, on the way up, I saw a bumper sticker on an Explorer that said, if you like to imported fuel, you'll love imported food, which puts me at risk of having my whole 5-minute testimony summarized in a bumper sticker.

But nonetheless, we must be more thoughtful about what our regulations and ESA policies have brought on our American Heartland and the salt of the earth families who work it all for us. The impact of the sudden availability of water left local farmers and ranchers immediately harmed, leaving thousands of acres of vital farmland unable to produce. The resulting trickle-down effect to the broader communities and region at large was nearly insurmountable.

Only after the wholesale destruction of an entire region's way of life was a study done that demonstrated the flaws in the application of ESA to stop the flow of Klamath water. The report rejects the idea that there was any scientific justification behind 2001 shutoff of Klamath Project water to stakeholders. It is a national tragedy that it took such widespread harm to show the lack of credibility in the standards set forth in the ESA. The current application of the ESA simply is not working. It didn't work here, and this is just one example of how dangerous faulty implementation or faulty original standards can be.

The final report of the National Academy of Sciences has shown that shutting off water to the Klamath Project was absolutely incorrect response to the discovery of the low numbers of these fish.

A full watershed approach involving the local landowners, farmers, and ranchers will be the only effective means to protect these fish. It is ironic that the people that suffered the most from the hasty and panicked response in the first place will be the individuals who are the ones involved firsthand in the recovery of these species. It is imperative that any solution that is implemented in the Klamath Basin must be achieved cooperatively with input from all different stakeholders with solutions based upon sound scientific principles, not fear or mass hysteria.

Depriving agricultural land of the vital water it needs and painting local farmers as the enemy of wildlife are all ineffective solutions to a watershed-wide problem. Those have been the only solutions attempted thus far, which is a travesty. Uncertain science must never be used to justify a decision that causes such devastating hardship for our people. The government must never implement sudden and unpredictable changes in the law or its appli-

cation that are harmful to the farming families and communities they affect.

To suddenly shut off the water tap to an ag community is reckless. We must instead phase in thoughtful environmental policy changes over a period of time by working together with the people who will be affected, instead of adopting arbitrary decisions that devastate business, communities, and lives.

The current pattern here in the Klamath Basin is flawed, and the status quo cannot continue. None of the stakeholders are happy or satisfied with the illogical way that the issues affecting the project have been treated. Long-term solutions for the basin must be comprehensive, scientifically justified, and must approach these issues in a way that can be maintained effectively in this region for years to come. Instead, I feel we must shift the focus from redividing the water pie as it is into enhancing, making larger the water pie so that historical rights and users are respected and preserved, as well as new needs. Our future as well as our heritage demand a vision for a long-term solution and not crisis management. Thank you very much.

[The prepared statement of Mr. LaMalfa follows:]

Statement of The Honorable Doug LaMalfa, Assemblyman, Second District, California, and Vice-Chair, Assembly Natural Resources Committee, California State Assembly

Thank you Chairman Pombo, Chairman Calvert, and Members of the Committee, for allowing me to testify on the issue of the Klamath River Basin and the future of the application of the Endangered Species Act in this region. I come here today, not just to testify as an Assemblyman who represents people and communities harmed by the initial water shut off, but also as a lifelong rice farmer who understands the vital need of water to producing crops, protecting the environment, and the survival of our rural communities.

This is not strictly a multi-sided struggle between environmentalists, local tribes, farmers, and the government. Many of the water users have implemented many different programs in an attempt to aid the recovery of the endangered sucker and coho salmon species that instigated the Bureau of Reclamation's (Bureau) initial shut off of the water supply on April 6, 2001. Assistance on creating and restoring wildlife refuges, ecosystem enhancement, water quality projects and strong attempts at water efficiency are just a few of the things that local communities have taken upon themselves in order to mitigate harmful effects on these endangered species.

The impact of the sudden unforeseen availability of water to these local communities was devastating. Not only were farmers and ranchers immediately harmed, leaving thousands of acres of vital farmland unable to produce, but the resulting trickle-down effect to the broader communities and region at large was nearly insurmountable. The loss of water inflicted \$200 million worth of economic damage to the Klamath region. You will hear individuals testify today that entire communities were almost wiped out entirely by this random and inappropriate application of the Endangered Species Act (ESA).

After the wholesale destruction of an entire region's way of life, a study showed that the application of the ESA to shut off availability of Klamath water was inappropriate and incomplete. Moreover, the report rejects the idea that there was any scientific justification behind the 2001 shut-off of Klamath Project Water to stakeholders. There was not enough scientifically based proof that higher lake and river levels would have any effect on the endangered fish. It is a national tragedy that it took such widespread harm to show the lack of credibility in the standards set forward in the ESA.

The final report by the National Research Council (NRC) on the issue of these endangered species has shown that shutting the water off at the Klamath Project was absolutely the incorrect response to the discovery of the low numbers of these fish. The final report shows that a full watershed approach will be the only effective means to protect these fish—a watershed approach that would necessarily include the farmers and ranchers in the area. It is ironic that those individuals who suf-

ferred the most from the hasty and panicked response in the first place, will be the individuals who are integrally involved in the recovery of the species.

Hype, fear, and incomplete science almost led to the destruction of an entire vital agricultural region. We cannot allow that to ever happen again, and we must act to restore stability and harmony between the stakeholders of the water in this region.

It is imperative that any solution that is implemented to the myriad challenges in this region must be achieved cooperatively. There must be input from all the different stakeholders and such solutions must be based upon sound scientific principles as laid out by NRC report. The foundation of these solutions must not pander to fear or mass hysteria.

The West Coast's farmland is not just food-producing and economy-boosting land, it is land that supports the health of the local watershed, it is land that feeds, houses, and protects local wildlife, it is land that promotes and maintains open space. It is a fallacy to believe that without the use of local farmland and the cooperation of local farmers and ranchers that the proposed improvements to the watershed can be made to protect these endangered species. This is why any plan for this area must be a coordinated effort between all the stakeholders. The scientific condition of the watershed must be determined, and a realistic balanced approach to improving it must be worked out at the local level. Regulations and bans, depriving agricultural land of the vital water it needs, and painting local farmers as the enemy of the local wildlife are all ineffective solutions to a watershed-wide problem. Those have been the only solutions attempted thus far. That's a travesty.

We need only look back on the oil embargoes of the 1970's and the current spike in steel and concrete prices today, driven by actions of our rivals around the globe. They do not have America's best interests in mind. Do we want to depend on them for our food security now by essentially offshoring our farming as well? We must be more thoughtful about what regulations and ESA policies have wrought on our American heartland and the salt-of-the-earth families who work it for all of us.

The NRC report has provided many different approaches and ideas on how to solve this problem. These solutions must be reviewed and a balanced, region-wide solution based on sound scientific principles that works for all stakeholders must be adopted.

Current application of the Endangered Species Act simply isn't working. It didn't work here, and this is just an example of how dangerous faulty implementation or faulty original standards can be. A cooperative approach to revising the ESA based upon solid scientific principles is critical to preventing the "mass hysteria" approach to application that was apparently utilized here on the Klamath. Constructive changes must be made that consider long-term solutions.

Many so-called "environmental problems" are attempted to be solved by outright bans, strict regulations, or other sudden and unpredictable changes in the law or its application. This "shotgun" approach to protecting the environment is too random and too harmful to the people, businesses, and communities that it affects. Solutions should be implemented over a period of time, so that the people and environments that are affected can have time to adapt and implement the ultimate goal. To suddenly shut off the water tap to an agricultural community, to suddenly determine that a certain fertilizer or pesticide can no longer be used, or to suddenly mandate the levels of emissions that have to be met because of environmental concerns is unrealistic. It gives farmers, ranchers, and other affected parties no time to implement changes over a period of time, effectively damaging or destroying their businesses, their communities, and their way of life.

I would like to emphasize that farmers and ranchers are definitely NOT against environmental protection, or to making changes, adaptations or improvements to their businesses for environmental reasons. The agricultural community has shown time and again their willingness and ability to utilize their land for open space preservation, watershed conservation, and wildlife habitat. They have worked hand-in-hand with the environmental community to change things for the better, when they have been approached. As a rice grower, the success of our industry as a positive partner for local wildlife habitat has been not only a huge success, but also a vital link in the chain between environmentalism and economy.

This is the direction that the Endangered Species Act should go. We must endeavor to find ways to phase in thoughtful environmental policy changes over a period of time by working together with stakeholders and involving the actual people on the ground who will be affected, instead of adopting arbitrary decisions with no warning that devastate businesses, communities and lives.

The current pattern here in the Klamath Basin is flawed, the status quo cannot continue. None of the stakeholders are happy or satisfied with the uninformed, illogical, and capricious way that the issue of the Klamath Project has been treated.

Resources management here needs to take place in an objective and reasonable way that balances the needs of all the people who will be affected, with the needs of the environment. The solution needs to be comprehensive and scientifically justified, it needs to approach the issue in a way that can be utilized and maintained effectively in that region.

Mr. CALVERT. Thank you, gentleman. Thank you. Before we introduce our next witness, I would ask that everyone please turn off their cell phones. Apparently it's interfering with the sound system. So if you would please turn off your cell phones or Blackberries or whatever, it's causing electronic problems.

And with that I would now like to recognize Mr. Fletcher for 5 minutes.

STATEMENT OF TROY FLETCHER, KLAMATH RIVER INTER-TRIBAL FISH AND WATER COMMISSION REPRESENTATIVE; ACCOMPANIED BY ALLEN FOREMAN, CHAIRMAN, THE KLAMATH TRIBES

Mr. FLETCHER. Thank you. Mr. Chairman, Members of the Committee, my name's Troy Fletcher. I'm a member and executive director of the Yurok Tribe. I'm accompanied here today by the Honorable Allen Foreman, Chairman of the Klamath Tribes of Southern Oregon. I'm speaking before you today on behalf of the Klamath River Inter-Tribal Fish and Water Commission. The commission represents three of the largest federally recognized Tribes in northern California and the Klamath Tribes located in southern Oregon. Collectively the Tribes' ancestral territories covers the entire Klamath Basin. The Inter-Tribal Commission's purpose is to serve the member Tribes' common goal of restoring and protecting the Klamath River Basin fish and water resources. We have advocated in the past and prior to this meeting that each Tribe would have liked to have a representative testify before you. We appreciate the opportunity of what we have here. We understand some of the constraints and other things that you're facing. In any event, our voice is necessary; our voice is important.

With regard to the specific application of the Endangered Species Act in the Klamath Basin, it's important to note that the goals of the ESA fall way short of implementing the United States' solemn commitments to native people in the basin. The government must also consider—

Mr. CALVERT. Excuse me. Will the gentleman please suspend.

Any disruptions from the audience will not be tolerated. Please allow the witnesses to give their testimony. Thank you.

Mr. FLETCHER. Thank you. In addition to the ESA, the government must also consider the element of Federal trust responsibility to the protection and restoration of Tribal Trust resources, which requires the restoration of all fish species in the Klamath Basin to a level sufficient to provide for the meaningful exercise of Tribal fishing rights, Tribal hunting rights, and gathering rights, etcetera. We urge the committee to keep in mind the Federal Government's duty to protect the resources of our Tribes, that it includes a duty to protect all of those resources, not just the two species subject to the ESA concerns and protection, and when this committee discusses the best way of balancing the needs of the species and the human needs, they keep in mind a special Federal obligation to

protect the species upon which the Tribes depends. The Department of Commerce has confirmed that that's their policy. In addition to recovering salmon populations to the point of delisting, it's also to restore populations to a level which meets Tribal Trust requirements. As to the Act itself, the Endangered Species Act in this river has now been polluted—politically diluted as badly as the water has been polluted.

But it's not as simple that the National Fisheries Service and U.S. Fish and Wildlife Service used bad science or that the use of questionable science is the problem. The problem is the NRC report, which turned away from the acceptable scientific practices and the universally acceptable precautionary principle. That's the foundation of the ESA. The ESA requires that when dealing with listed species, Federal agencies must rely on the best scientific information available at that time, and if data were lacking, to err in favor of the species being protected. As case in point, the NRC itself issued a report on the science and Endangered Species Act in 1995, which clearly stated, says, "The ESA reasonably asked scientists to make conservative decisions about protecting species on the brink of extinction based on the best available data." It does not require certainty or all the information that scientists or decisionmakers might like to have, because it simply might not be there.

In the Klamath in 2000, the agencies did just that, that in the biological opinions issued. The Bureau of Reclamation had issued a draft operations plan, which the services determined through the best information available would jeopardize the ESA listed species. They required higher lake levels and river flows than the Bureau had proposed, which resulted in cutbacks to project irrigators. The NRC then became involved under contract with the Department of Interior, and ignoring its own 1995 report, completely turned the precautionary principal of ESA management on its head. In essence, what the NRC concluded was that there was no definitive proof that flows and lake levels, which were in place during the 1990s, harmed coho salmon or suckers, so therefore there was no scientific evidence to change the water management pattern that was in place during the 1990s. This new NRC process requiring conclusive scientific evidence of harm, rather than the normal ESA policy to ensure against harm, creates a biased risk for harm.

One thought we'd like to leave you with and the panel with, particularly management agencies, is the listing of the species under the ESA indicates that past management has not been conducive to the propagation of these species. We then have to change something; we have to get away from the status quo. The Tribes in the basin are made up of human beings, we're family members, we're parents, we're grandparents, we have children, we have the same aspiration as the other people in this basin. When it comes to veterans, many Tribal people in this basin died for this country, even before they had the right to vote. So when it comes to fair and what needs to happen, we ask that and we make clear and affirm that all the Tribes in the basin are ready to roll their sleeves up, are ready to work with the farming community, with Congress, with the Federal agencies, to do what we need to do to fix this basin. But from our perspective, it can't be the status quo; it cannot

remain the status quo. And a solution cannot be at the expense of Tribal resources, our fisheries, our wildlife, or our gathering materials. We're ready to work, and we ask for your leadership to help us get there. Thank you.

Mr. CALVERT. Thank you. Thank you, Mr. Fletcher. I would now—would like to ask, next on my list is Commissioner Brown. Mr. Brown.

**STATEMENT OF THE HON. RALPH BROWN, VICE-CHAIR,
CURRY COUNTY BOARD OF COMMISSIONERS, GOLD BEACH,
OREGON**

Mr. BROWN. Thank you, Mr. Chairman and Members of the Subcommittee. For the record, I'm Ralph Brown from Brookings, Oregon. I'm County Commissioner there. I also sit on the Pacific Fisheries Management Council. I've been involved with that—I'm entering my ninth year. I also own fishing vessels that fish out of the Port of Brookings Harbor. I'm not going to read my testimony. You can read every bit as good as I can. You can use it more as background.

The theme that I would hope you would leave with here from me, though, is summarized in one sentence: Don't forget the people. I've been involved in management for over 20 years, in resource management. Eighteen of those have been in positions of decision-making and policymaking. The first thing that happens when we decide that we need to do something with resources, is that we forget that what we're always trying to do is change people's behavior. And we tell people they have to do things. We don't ever ask them if there's a better way to do it. We will get further in protecting our resources if we remember that we're trying to get people to change, that we're going to be working with people who have motivations, they have reasons for doing what they're doing, it benefits them some way, and we need to work with incentives and with inducements as much as we work with coercion in order to achieve change. And I would hope that you will consider that as you go through your deliberations on endangered species in the future, pay more attention to the economics, pay more attention to the social part of the reasons people do things.

You mentioned—Mr. Herger mentioned Blake, 8 years old, that wants to farm. I bought my first commercial fishing license when I was 8 years old. I started fishing summers with my dad. At one point when was 40, I decided that I'd try to figure out if I could figure out how much time I had spent on the ocean, and it was 30 percent of my life had actually been spent out on the ocean, and a good portion of that was salmon fishing.

When I was a kid, there were four processors in the Port of Brookings. Want to talk about human impacts, there are none now. The buildings aren't even there. There were 10,000 salmon boats on the West Coast. We're down to a couple hundred—a couple thousand, excuse me.

Troy mentioned that the Tribes are people too. We're all people here, and we all need consideration, and we're all affected by this.

I remember kind of the high point of the downturn, if you'll excuse my calling it a high point, in salmon on the coast. I was sitting in a restaurant talking to a friend of my dad's, fellow that was

in his mid 60s. And he was sitting there staring into his coffee cup, and he finally, in a very quiet voice that I'll never forget said, I don't know what to do anymore, I don't fit anywhere.

The Klamath River has impacted my area in ways that I can't even begin to explain. Not too many years ago fishermen delivered \$7 million worth of salmon annually into the Port of Brookings. Because we had the processors there, that had a community affect of about three times that, \$21 million worth of community impact. We're down to about \$700,000 in landings or less, and we have no processors. The impact, when you have no processors, is about one to one. The community impact of salmon now, of commercial salmon, is about \$700,000. It doesn't take a real math whiz to see that's about one thirtieth of what it used to be.

Remember the people. If I could sit here for 5 minutes and just say that, remember the people, that's what I would do. When you do your deliberations, you've seen the cartoons with the little guy sitting on your shoulder, the devil on one side and the angel on the other, and I hope you'll picture the little angel say, remember the people.

I came over and met with farmers here, and it's in my written testimony, I won't repeat it, and I saw the same fear, and I saw the same anger that I see in Tribal people, that I see in people on the coast. We have to get together if we're going to fix this. We can fix it. I'm glad Troy—I'll quit here in just a second. I'm glad Troy made the offer that he made. I hope that the farmers will take him up on it, sit down, and start working cooperatively, because that's the only way we're going to fix this. Thank you.

[The prepared statement of Mr. Brown follows:]

**Statement of Ralph Brown, Vice-Chair,
Curry County Board of Commissioners, Brookings, Oregon**

Good morning, Mr. Chairman and members of the Sub-committee.

I am Ralph Brown of Brookings, Oregon. I wear several hats at this hearing. I am a County Commissioner from Curry County. I sit on the Pacific Fisheries Management Council, and own fishing vessels that fish out of the Port of Brookings Harbor.

I want to make it clear that, although I grew up in the salmon fishing industry, I do not fish for salmon in my fishing business now. The truth is that I know very little about the biology of salmon in fresh water or of the hydrology of the Klamath River. Some people in the fishing business will think that I am a strange choice to speak on Klamath issues because of this and, to some degree, it is a valid criticism. I do have over twenty years resource management experience however.

My interest in the Klamath River grows out of my fishery management experience, out of the impact that the management of Klamath salmon has had on the communities of Curry County, and out of several attempts to hold meetings between Klamath Farmers and Fishermen.

Management of Klamath River salmon has had a tremendous impact on the communities of what we call the Klamath Management Zone. This zone runs from below Eureka, California to north of Gold Beach, Oregon. We have intentionally moved most of the commercial salmon fishery out of this area, and reduced the recreational fishery.

Salmon fishery management essentially consists of mapping the various runs of fish by time and area. We try to find locations and seasons for the fishery that allow harvests of abundant runs while keeping the harvests of stocks of concern below allowable levels, such that all runs are fished at capacity but not over harvested. Runs of concern consist of both those on the threatened or endangered list and some that are simply vulnerable to over fishing due to the timing and location of the run. We have management concerns with several of the runs on the Klamath River. Coho are listed under the Endangered Species act, of course, but most of our management has been aimed at another species, Fall-run Chinook. This fish has been a major

constraint to salmon fisheries along the Coast and management of it has had a large impact on the communities of the Klamath Management Zone.

During summer months, Klamath River Fall Chinook are found from San Francisco to the Columbia River. Percentages of Klamath Fish found in the catch are highest near the mouth of the Klamath River and taper to low levels with greater distances from the River. The area where the percentage of Klamath River catches is the highest is the Klamath Management Zone. Catch is limited in this area in order to allow access to more abundant runs in other areas.

When I was a child, the Klamath Management Zone was one of the most popular fishing areas along the Coast. Hundreds of commercial fishing boats from Seattle to San Francisco would spend their summers fishing, and selling their catch, in the area. Ports had processing facilities all along the shoreline of the harbors. Today there are very few salmon boats that fish in the area. There are no major processors, only buying stations, located in the Ports of Gold Beach, Brookings, Crescent City or Trinidad.

Thousands of recreational fishermen would come to these ports to fish in the summer. We have only had full recreational fishing seasons during the last two summers following nearly complete closures for much of the 1980's and 1990's.

The number of commercial salmon fishing boats on the West Coast has dropped from nearly 10,000 during the 1970's to only about 1,000 active vessels today. Much of the restriction that brought this decline was due to Klamath salmon abundances, and management restrictions that were necessary on other more abundant runs to insure that catches of Klamath Fall Chinook were kept at allowable levels. The hardships caused by this reduction in salmon fishing along the Coast are fresh in the minds of Coastal residents and in the salmon industry. We do not want to see a repeat of this disaster.

My interest in getting fishermen and farmers together was the result of a meeting with Representative Walden. A couple of years ago, I crowded my way into a meeting with Congressman Walden concerning reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act. We were sitting there explaining to the Congressman our problems with lawsuits by environmental groups over NEPA processes, our problems with inadequate data and science and overly restrictive management as a result, when he commented that we sounded just like a bunch of Klamath farmers. He said that the conversation that we were having was identical to conversations with the Klamath Farmers, and yet farmers and fishermen were at each other's throats all of the time. We agreed that farmers and fishermen probably had more in common than we had differences if we ever sat down and talked, and got to know each other. He asked me to try to find a way to bring fishermen and farmers together.

I'm not sure that I would have followed up on this but when I got home from Washington D.C. I found a message from Dan Keppan, of the Klamath Water Users Association, on my answering machine. He had been contacted by Representative Walden's staff and given a report on the discussion we had. Dan and I had our first meeting in Klamath Falls shortly after.

In talking to Dan it was apparent that fishermen and farmers, as resource users, have many common issues. We agreed to try to hold a series of meetings between the fishing and farming communities and see if we could establish communication such that our common interests could be established and perhaps allow a more rational discourse on our differences.

Along the Coast spanning the Klamath Fishery Management Zone, a coalition of interested fishing groups, Ports and local Governments has been formed. This is the Klamath Zone Fisheries Coalition. The Klamath Zone Fisheries Coalition seemed like a natural place to start so I contacted them and interested them in joining in the discourse.

We have had several meetings. One of these included a tour of the Klamath Water Project and one was a tour of the fishing industry in Curry and Del Norte counties. Our last meeting was held at a Pacific Fishery Management Council meeting where representatives of the Klamath Water Users Association also had an audience with the Management Councils Habitat Committee.

For me, the tour of the Water Project was enlightening. I left feeling that I had a much better understanding of the pride that the farmers felt in the project and a better understanding of their view of the history of the river. I recommend this tour to anyone with an interest in water issues in the area.

I hope that the tour of the fishing industry gave the farmers a similar understanding of the importance of the salmon fishery to us and gave them some feel of the hardship that we have already felt.

Even when trying to get along and understand each other it is sometime difficult for fishermen and farmers to have a discussion that doesn't rub against raw

wounds. Farmers and fishermen have differing views of the world and differing views of this situation in particular. The animosities and fears of both groups are real, intense and barely concealed beneath some very thin skin. Simple words like “fish die-off” or “fish kill” have different connotations to fishermen and farmers. Fishermen innocently using the term “fish kill” can cause a very visible reaction from a farmer as the farmer interprets this as finger pointing at them. For fishermen, the term “die-off” implies that there was no cause and therefore no reason to take corrective action. Farmers feel threatened by the potential of water curtailments but fishermen remember the hard times and feel threatened by anything that might harm fish. The participants of the meetings that we have had seem to be somewhat better able to look past this.

I have found a great deal of interest among individuals in continuing these meetings and in continuing to expand the circle of participants. Until the circle of participants is expanded considerably, the meetings will not significantly change the debate over the condition of the river. Funding to continue these meetings has become a problem, and finding a group that has the trust of both the farmers and fishermen to organize and take the lead is challenging.

I suspect that the Klamath Taskforce was intended to fulfill this niche, but for some reason this is not working. We need to have a discussion of the Taskforce process to see why it doesn’t seem to be working and to see if we can get a process in place that has the function of bringing people together toward a better understanding of each other and of the problem.

I am going to conclude with some almost random observations that I have made during the meeting process.

Although Coho and steelhead are the listed species, in many ways, the river is managed for fall run Chinook. Ocean management is clearly centered on fall run Chinook and shortages of fall run Chinook are what caused much of the curtailment of salmon fisheries in the ocean. The fish that died a few years ago were predominately fall run Chinook. Often when Salmon fishermen are expressing concern for salmon on the river it is not the listed species that is being talked about. It is fall run Chinook.

Similarly, coastal fishermen often talk about the Klamath River but mean the entire watershed, not just the main stem. Most of the fishermen that I talk to are convinced that the Trinity River is as important as the main stem of the Klamath to the health of salmon in the system. We strongly support a system-wide, watershed approach to examinations of the river. We need to deal with the entire watershed, not just part of it.

Finally, when dealing with the management of a wild species, such as salmon, we usually are not trying to change the behavior of the species but of the people that interact with the species. We are trying to change behaviors that have caused species to decline. These may be direct takes, such as in fishing or hunting, or may be indirect takes through changes in habitat, but in each case we are trying to change human behaviors. We would be better off if we kept that in the fore front of our thoughts as we discuss these issues.

We seem to rely primarily on coercive rules to change behaviors. This often has the effect of producing resentment, and resistance, to the regulations and to the regulators. We need to pay more attention to the social and economic conditions that influence behavior and look for incentives and inducements to pull people into behavior change, not just penalties, that push people to change.

In short, my recommendation for the Klamath River is to remember that we are trying to change people. We need to remember that we are dealing with good hearted, well meaning individuals on all sides, but people that have differing understanding of the issues and of the solutions and goals. We need to examine our process to insure that they promote better understanding of each other, and that they promote development of common goals. We need to be sure that we examine our methods of promoting behavior change and whenever possible use incentives and inducements not just coercion.

Mr. CALVERT. Thank you. Thank you, Mr. Brown. Next, Mr. Gaines, you’re recognized for 5 minutes.

**STATEMENT OF BILL GAINES, DIRECTOR OF GOVERNMENT
AFFAIRS, CALIFORNIA WATERFOWL ASSOCIATION,
SACRAMENTO, CALIFORNIA**

Mr. GAINES. Good morning, Mr. Chairman and Members of the Committee. My name is Bill Gaines. I'm the Director of Government Affairs for the California Waterfowl Association, and I would also like to thank each of you for traveling to the Upper Klamath Basin today to provide us with an opportunity to talk about our concerns related to the Endangered Species Act. The Upper Klamath Basin is the most critical waterfowl staging area in all of North America. So important is the Klamath Basin to Pacific flyaway and continental waterfowl that you can easily find the Klamath Basin on a waterfowl flyway map by simply looking for the apex in the flyway hourglass.

Historically, this Basin contained over 350,000 acres of naturally occurring wetland habitats. Today, however, many of these natural wetlands have been lost. Yet, each year, an estimated 80 percent of our Pacific flyway waterfowl, nearly a full one-third of our continental waterfowl population, travels through the Klamath Basin annually on their migratory adventure.

Nearly all of the remaining wetlands today in the Upper Klamath Basin are contained within the Klamath Basin National Wildlife Refuge Complex. These habitats not only provide critical waterfowl habitat, but they also provide critical habitat for an estimated 430 other wildlife species, as well as serving as the biggest staging area for bald eagles throughout all of the lower 48 states.

Recognizing the importance of the Upper Klamath Basin to migratory waterfowl, in 1908 President Teddy Roosevelt established the Lower Klamath National Wildlife Refuge as our nation's first waterfowl refuge. Today, nearly 100 years later, it remains by far and away our most important waterfowl refuge throughout the entire National Wildlife Refuge System.

However, due to changes in the natural hydrology of the basin, many of these wetlands within the complex and outside of the complex must now be managed, they must be artificially irrigated and intensely managed to re-create marsh conditions. They no longer get naturally wet during flood periods. As a result of that condition, quantity and quality of wetland habitat available in any given year is directly tied to the availability of water supplies for wetland management.

Some environmentalists, in their effort to protect both fish and wildlife, have called for the elimination of agriculture in the Upper Klamath Basin to address these concerns. I'm here to assure you today that that is not the solution to the Upper Klamath Basin or the Klamath watershed's water problems. Agriculture today provides critical habitat for Pacific flyaway waterfowl. It's similar to the Sacramento Valley, where 700,000 acres or any 700,000 acres of rice is critically important surrogate habitat to replace many of the wetlands that have been lost.

Cereal grains and other wildlife friendly agricultural here in the Klamath Basin provide an estimated 50 percent of the food energies necessary to feed Pacific flyaway waterfowl. If we were to do away with agriculture in an effort to free up water supplies for managed wetlands on the refuge or for fish, we would not help Pa-

cific flyaway waterfowls. We would devastate the Pacific flyaway waterfowl resource. In addition to the habitat that agricultural production provides, growers here in the upper Klamath Basin also play a critical role in our annual efforts to manage our wetlands because they provide tail water in the fall when they dewater their agricultural lands, which is critical to the management of Upper Klamath Basin, manage wetlands within the complex and elsewhere. The willingness of growers and local irrigation districts, like Tulelake Irrigation District and Klamath Irrigation District, to wheel that water to the refuge and to provide some water of their own for refuge management during the important fall flood up is vitally important to our ability to manage these wetlands, especially during the especially important fall flood time of the year. Ag is not part of the problem here in the Upper Klamath Basin. It's not part of the waterfowl problem. It is part of the solution.

Three species of fish continue to hold 1,200 families and the Pacific flyaway waterfowl resource hostage here in the Upper Klamath Basin, and we would like to offer some solutions that can address these problems. First of all, we ask Congress to ask the Department of Interior agencies to veer away from single-species and consider all species, as well as the benefits of wildlife-friendly agriculture when they are making decisions related to the Endangered Species Act.

We also ask Congress to seek changes in the Endangered Species Act, which recognize our international obligation under the Migratory Bird Treaty and to elevate waterfowl, which is our shared international resource, to a par with listed species under the Endangered Species Act.

We also ask Congress to elevate the priority of refuge water deliveries to a par with Endangered Species Act actions as well, without impacting deliveries to the agricultural community, which are vital, not only to the local economy, but vital to the Pacific flyaway as well. This can be done, but it can't be done without significant Federal funding that can help us do projects, like off stream storage projects that can help us capture excess flows during the time of year when excess flows are flowing down the river, or tail water return systems, which allow growers and other water users to more efficiently utilize the water that is available to them.

Finally, we ask for an opportunity to work with Congress in the next farm bill to carefully design new and creative programs specifically designed to address the needs of Klamath Basin agriculture and to provide local growers with incentives to provide even more wildlife-friendly agriculture to the Pacific flyaway waterfowl.

Again, the Upper Klamath Basin is the most important staging area for waterfowl throughout our North American continent. It is important that we take every step we can to address this international waterfowl resource and to protect the agricultural growers who are so important to providing the food energies necessary for that resource today. I thank you for the opportunity to provide these comments.

[The prepared statement of Mr. Gaines follows:]

**Statement of Bill Gaines, Director, Government Affairs,
California Waterfowl Association**

Good morning. Mr. Chairman and Members of the Committee, my name is Bill Gaines, and I am the Director of Government Affairs for the California Waterfowl Association. On behalf of our Association's nearly 20,000 members, and waterfowl enthusiasts throughout the Pacific Flyway, I would like to thank you for coming to Klamath Falls, and for providing us the opportunity to present our concerns regarding the chronic water crisis that continues to plague the Upper Klamath Basin.

Founded in 1945, the California Waterfowl Association (CWA) is a private, non-profit organization dedicated to the conservation of California's waterfowl, wetlands and our sporting heritage. The California Waterfowl Association effectively pursues this mission through waterfowl research, habitat projects, education and outreach programs, and Government Affairs activities.

The Upper Klamath Basin is the most critical waterfowl staging area in all of North America. So important is the Klamath Basin to North American waterfowl on their annual migration that the region can be easily located on a flyway map simply by locating the "apex of the Pacific Flyway hourglass."

Historically, this Basin contained over 350,000 acres of naturally occurring seasonal and permanent wetland habitats. Today, however, largely due to the construction of the Klamath Reclamation Project, over 75% of these historic wetlands have been destroyed. Yet, each year, an estimate 80% of Pacific Flyway waterfowl—representing nearly a full one-third of the continental population—depend upon this Basin's few remaining wetlands and agricultural lands for critical staging habitat. In addition to waterfowl, remaining wetlands in the Basin B nearly all of which are contained within the Klamath National Wildlife Refuge Complex B also provide critical habitat for many other species. In fact, more than 430 other wildlife species have been documented in the Upper Klamath Basin B including the largest wintering concentration of bald eagles in the lower 48 states.

Recognizing the importance of the Upper Klamath Basin to migratory waterfowl, and the tremendous loss of waterfowl habitat resulting from the construction of the Klamath Reclamation Project in 1906, President Teddy Roosevelt established the Lower Klamath National Wildlife Refuge by Executive Order in 1908. Nearly one hundred years later, the Klamath National Wildlife Refuge Complex remains the most important waterfowl refuge in the entire National Wildlife Refuge System.

Because of the Klamath Reclamation Project, and the manner in which it changed the Upper Basin's natural hydrology, nearly all of the region's wetlands must now be "managed" B artificially irrigated and intensely managed to maintain marsh conditions. In effect, public and private wetland managers in the Klamath Basin must now "farm for ducks". As a result of this condition, the quantity and quality of wetland habitat available in any given year B most notably the critical waterfowl habitats available on the Lower Klamath and Tule Lake National Wildlife Refuges B is heavily dependent upon availability of wetland water supplies from the Klamath Reclamation Project. Tragically, as you are all keenly aware, the Upper Basin's highly limited surface water supply, combined with the regulatory actions mandated by Biological Opinions, will result in little Project surface water being made available to the refuges this year, and little or no water for these managed wetlands in all but the wettest of future water years.

Combined, Lower Klamath and Tule Lake National Wildlife Refuges require about 216,000 acre-feet of water each year for full and appropriate habitat management. Yet, again this year, artificially high Endangered Species Act (ESA) mandated water levels in Upper Klamath Lake and enhanced flows in the Klamath River will minimize Klamath Reclamation Project deliveries to wildlife habitat on Klamath National Wildlife Refuges—marking the fifth year in a row in which the Refuge Complex must operate on a substantially reduced water budget. With this summer's Project deliveries to the refuge again at a minimum, refuge staff are being forced to cannibalize some wetland units in an attempt to adequately manage others. The net result being a 50% reduction in wetland habitats available on Lower Klamath Refuge.

Some environmentalists, in their effort to protect both fish and wildlife, have sought to address this problem by calling for the complete elimination of agriculture in this Basin in order to redirect surface water to refuge wetlands. Our Association, however, is here to tell you that the elimination of agriculture is not the answer. In fact, eliminating agriculture in the Upper Klamath Basin in an attempt to free up wetland water would substantially harm, not help Pacific Flyway waterfowl. With three-quarters of our Upper Basin wetlands no longer available, it is crucial that we do all we can to manage the few habitats that remain in order to maximize their values and functions for waterfowl and other wildlife. Yet, even if we had suffi-

cient annual Klamath Project water available to maximize the values of these few wetlands, we still could not meet the biological needs of the tremendous numbers of waterfowl that depend upon this region. As such, similar to California's Sacramento Valley where over one-half million acres of rice production provides vitally important surrogate habitat for waterfowl, cereal grains and other wildlife-friendly agriculture in this Basin are critical to meeting the annual needs of Pacific Flyway waterfowl.

In addition to the direct habitat agricultural production provides, perfectly timed "tail water" made available to the refuges by growers who are de-watering their fields in the late summer and early fall provides the cornerstone of surface water necessary for the especially important annual fall flood up. Further, the willingness of farmers and local agricultural irrigation districts to pump ground water from their wells and wheel it to the refuges at time of greatest need, often at little or no cost, has proved integral to refuge management throughout this continuing water crisis. Suffice it to say that removing wildlife-friendly agriculture from the Upper Klamath Basin B regardless of the quantity of water it may free up for refuge use B would devastate our Pacific Flyway waterfowl resource by eliminating roughly half of the Upper Basin's annual waterfowl food base and our only current stable source of annual wetland surface water supplies.

Members of the Committee, three species of fish continue to hold the Pacific Flyway, the bald eagle, roughly 430 other wildlife species, 1,200 families and the entire local economy hostage in the Upper Klamath Basin. The California Waterfowl Association does not believe that this was Congress' true intent when they passed the Endangered Species Act a few short decades ago. Truly, as our nation becomes more urbanized, conflicts between our fish and wildlife species and our human environment will become increasingly common. Today's crisis in Klamath can be viewed as the "canary in the mineshaft" for what we can expect in the future should resource agencies be allowed to continue to implement the ESA as they do today.

To address these very real concerns, we ask Members of this Committee, and all of Congress to join our Association in seeking some solutions. We ask you to join us in calling for U.S. Department of Interior agencies to veer away from irresponsible "single-species" management, and instead require that the impacts and risks to waterfowl and wildlife be also considered when making water allocation and other decisions under the ESA. We also ask that the importance of wildlife-friendly agriculture and the vital water supplies that the farming community makes available for wetland use be fully considered when evaluating the importance of agriculture in the Upper Basin relative to the watershed's environmental needs.

The California Waterfowl Association also asks for an opportunity to work with Congress on seeking changes in the Endangered Species Act which recognize our obligation to our international neighbors under the Migratory Bird Treaty and elevate our internationally shared migratory waterfowl resource to a par with listed species. We also wish to work with Congress on obtaining careful, common sense amendments to the ESA which will forever ensure that impacts to all non-listed species are appropriately considered before implementing actions directed at addressing listed species concerns. Closer to home, and more specifically, we ask for Congress to direct the Klamath Reclamation Project to elevate the priority of refuge water deliveries to an equal par with fish water, without impacting agricultural deliveries which are vital not only to the local economy, but also to Pacific Flyway waterfowl.

We also urge Congress to strongly consider appropriating federal funding for projects designed to increase the surface water annually available to meet the region's water needs. For example, off-stream storage facilities to capture excess flows when available, and tail-water return systems which more effectively utilize available supplies could play a vital role in addressing the region's water woes. In addition, these types of facilities, if properly managed, can also provide additional waterfowl habitat and groundwater recharge benefits. We also hope to work with Congress to design new and creative programs in the next Farm Bill which provide additional incentives to encourage more wildlife-friendly farming and ranching practices.

The Upper Klamath Basin is the most important waterfowl staging area in all of North America. Yet only about 25% of the Basin's historic wetland habitat base remains today. With nearly all of these remaining wetlands contained within the boundaries of the Klamath Basin National Wildlife Refuge Complex, it is critical that we allocate sufficient water to address the needs of the waterfowl, bald eagles and the hundreds of other species which depend upon this habitat. When making water allocation decisions we must also consider the vitally important wildlife benefits provided by local agriculture, and, of course, the importance of farming to local families and the community.

Finally, we ask the Committee to recognize that the most important environmental assets of the Klamath Basin B its waterfowl B are also the greatest victims of the current water management decisions. It is also important to recognize that waterfowl hunting provides a financial and emotional commitment to the conservation, and enhancement of wetlands throughout North America. Throughout California, as an example, 70% of the wetlands which remain today are privately owned and managed, with the sole incentive of these landowners being the ability to hunt ducks and geese on these habitats during the waterfowl season. Yet, these wetlands directly or indirectly support hundreds of wildlife species year-round, as well as an estimated 50% of California's listed species.

Klamath Reclamation Project water allocations mandated to address the needs of three listed fish species in the Klamath Basin are seriously threatening the future health and well-being of the Upper Klamath Basin community, and the Pacific Flyway. We urge the Committee to recognize this serious fault and demand that future water management strategies assure that waterfowl, including the farm and ranch food resources, are equally protected.

The California Waterfowl Association appreciates the opportunity to provide testimony today. We do not believe there can be only one "winner" in this crisis. We believe that if we all work together we can find solutions which meet the needs of the local community, the Pacific Flyway, other wildlife and the fish species. We look forward to working with Congress and all interests in seeking these solutions.

Mr. CALVERT. I thank you, gentleman. I would now like to recognize Supervisor Smith. Supervisor Smith, you're recognized for 5 minutes.

**STATEMENT OF THE HON. JIMMY SMITH, SUPERVISOR,
HUMBOLDT COUNTY BOARD OF SUPERVISORS, EUREKA,
CALIFORNIA**

Mr. SMITH. Thank you, Mr. Chairman, for the honor of being here today. I really appreciate it. I am a member of the Humboldt County Board of Supervisors. Prior to my election, I was a commercial fisherman and owner of a 46-foot salmon troller, which I just sold 6 weeks ago, and Dungeness Crabber, operating out of Humboldt Bay. My nearly 40 years of ocean fishing prompted interest in the complete life cycle of salmon. To that end I studied and trained in salmon management in the off season.

I'm proud to say I worked with former Congressman Bosco and a number of sport, Tribal fishermen, business owners, and elected officials to generate language for Public Law 99-552, the Klamath River Restoration Act. The intent then, as today, was to restore fish and wildlife in the Klamath River Basin. Even during the '80s, as those discussions occurred, Tribal Elders stated clearly, water is the key.

Sadly, we have not been able to stop the decline of important fish species in the Klamath System. Although the Endangered Species Act has weighed in as a tool to protect and aide in the recovery of the Klamath's fish populations, it has not reversed the deadly trend. The battle for water and protections will continue.

I recognize and respect the concerns expressed by the farmers. Humboldt County believes in protecting its agricultural lands and the ranchers and farmers so important to our economy. We are working diligently with the State of California to make sure Williamson Act standards are maintained so tax incentives can keep those agricultural lands intact; it's absolutely essential. The same respect is extended to the landowners in the Klamath Basin. In fact, the fishermen and coastal constituencies support economic assistance for Klamath Basin farmers who suffer from drought or

are contributing to water for fish and wildlife. I know some of those people and have hunted on their lands.

It is common knowledge that other important species are dependent on the farm lands in the Klamath Basin. Wintering herds of mule deer and antelope forage on the agricultural lands when winter snows force them out of the mountains. Eagles concentrate here because of the abundant waterfowl populations, also supported by the farmers. It is acknowledged that the Klamath landowners have a bond with the land; they are essential food producers and are known for being fiercely independent, similar in every regard to the commercial fishermen. We all share the pain for protecting listed species.

California fishermen must avoid coho salmon, but in spite of zero harvest, the coho are still in trouble. In fact, fishermen have been denied access to huge areas of ocean and abundant Central Valley stocks to eliminate incidental contact with listed coho. Most certainly, coho protections and low numbers of Klamath chinook continue to have profound impacts to Humboldt County's economy. Of great concern is the loss of about 50 percent of the California salmon fishing fleet since 1995, which is, by the way, 1,320 vessels. At an average \$40,000 income, discounting idle vessels, that's a \$40 million in annual losses.

Of equal importance is the economic devastation dealt to the recreational fisheries and the once-thriving service industries. The Tribes are also suffering irreparable harm with continuous cuts to their commercial subsistence and ceremonial salmon harvests.

Throughout history coho and chinook have been able to withstand El Ninos, floods, and droughts, although their populations suffered in the short-term. They cannot, however, be expected to support fishing economies when babies die in the river by the hundreds of thousands and adult spawners meet sudden death, as in 2002. The thousand plus fishing businesses that perished over the last 9 years are testimony to those losses. Prior to 1995, California lost an additional 4,000 vessels with staggering ramifications to support businesses and related employment. As an example, Humboldt Bay has only one fish processor left, and three once-thriving boat repair facilities are gone forever. Although these losses are not wholly attributable to the Klamath salmon failure, it is the most significant factor in the economic decline.

This year's fisheries managers again reduced fishing opportunity to protect projected low returns of Klamath River chinook. The very token Humboldt and Del Norte Counties' quota was reduced by 40 percent. These and other stringent regulations are in effect because of dismal returns last year. Those returning adults are now what is left of the approximately 300,000 young salmon that died in the river in 2000, 2001. This year young fish are again dying by the thousands before they can complete their journey to the ocean.

And finally, the regulations are clear and immediate, more closures, reduced harvest, huge economic impacts from Central Oregon to San Francisco, and never any assistance on the coast, not even recognition that economic disasters continue to occur on the coast with alarming regularity.

So I would ask, in summation, Mr. Chairman, if we could investigate and agree on the cause of juvenile and adult deaths, increase

flows in the Klamath and Trinity Rivers. Please support Humboldt County's effort to have the 50,000 acre fee made available, as the '59 Contract once stated. We will help make sure those fish don't die. And maintain and fully fund, please, the Klamath Task Force and the Management Council so that those decisions made with sound science can be implemented, even though they do affect fisheries. If you have to close them down, we want the best information and best managers. And I thank you all for being here today. It's a great, great opportunity for all of us. Thank you.

[The prepared statement of Mr. Smith follows:]

**Statement of The Honorable Jimmy Smith, First District Supervisor,
Humboldt County Board of Supervisors, Eureka, California**

Thank you Mr. Chairman for the honor to appear here today. My name is Jimmy Smith. I am a member of the Humboldt County Board of Supervisors. Prior to my election, I was a commercial fisherman and owner of a 46-foot Salmon Troller and Dungeness Crabber, operating out of Humboldt Bay. My nearly forty years of ocean fishing prompted interest in the complete life cycle of salmon. To that end I studied and trained in salmon management in the off season.

I am proud to say, I worked with former Congressman Bosco and a number of sport and Tribal fishermen, business owners and elected officials to generate language for P.L. 99-552, the Klamath River Restoration Act. The intent then, as today, was to restore fish and wildlife in the Klamath River Basin. Even during the early 1980's, as those discussions occurred, Tribal Elders stated clearly "water is the key." Sadly, we have not been able to stop the decline of important fish species in the Klamath system. Although the Endangered Species Act has weighed in as a tool to protect and aide in the recovery of the Klamath's fish populations, it has not reversed the deadly trend. The battle for water and protections will continue.

I recognize and respect the concerns expressed by the farmers. Humboldt County believes in protecting its agricultural lands and the ranchers and farmers so important to our economy. We are working diligently with the state to secure Williamson Act standards to maintain tax incentives to keep agricultural lands intact. The same respect is extended to the landowners in the Klamath Basin. In fact, the fishermen and the coastal constituencies support economic assistance for Klamath Basin farmers who suffer from drought or are contributing water to fish and wildlife. I know some of those people, and have hunted on their lands. It is common knowledge that other important species are dependent on the farm lands in the Klamath Basin.

Wintering herds of mule deer and antelope forage on agricultural lands when winter snows force them out of the mountains. Eagles concentrate here because of the abundant waterfowl populations, also supported by the farmers. It is acknowledged that the Klamath landowners have a bond with the land; they are essential food producers and are known for being fiercely independent. Similar in every regard to the commercial fishermen. We all share the pain for protecting listed species. California fishermen must avoid Coho salmon, but in spite of zero harvest, the Coho are still in trouble. In fact, fishermen have been denied access to huge areas of ocean and abundant Central Valley Chinook stocks, to eliminate incidental contact with listed Coho. Most certainly, Coho protections and low numbers of Klamath Chinook continue to have profound impacts to Humboldt County's economy. Of great concern is the loss of about 50% of the California salmon fishing fleet since 1995, which is 1,320 vessels; at an average \$40,000 income, discounting idle vessels, that's a \$40,000,000 annual loss. Of equal importance is the economic devastation dealt to the recreational fisheries and the once thriving service industries. The Tribes are also suffering irreparable harm with continuous cuts to their commercial, subsistence and ceremonial salmon harvests. Throughout history Coho and Chinook have been able to withstand El Ninos, floods and droughts, although their populations suffered in the short-term. They cannot however, be expected to support fishing economies when babies die in the river by the hundreds of thousands and adult spawners meet sudden death as in 2002. The thousand plus fishing businesses that perished over the last nine years are testimony to those losses. Prior to 1995, California lost an additional 4,000 vessels with staggering ramifications to support businesses and related employment. As an example, Humboldt Bay has only one fish processor left and three once thriving boat repair yards are gone forever. Although these losses are not wholly attributable to the Klamath salmon failure, it is the most significant factor in the economic decline.

This year fisheries managers again reduced fishing opportunity to protect projected low returns of Klamath River Chinook. The very token Humboldt and Del Norte Counties quota was reduced by 40%. These and other stringent regulations are in effect because of dismal returns last year. These returning adults are what are left after approximately 300,000 young salmon died in the Klamath River in 2000. This year young fish are again dying by the thousands before they can complete their journey to the ocean.

The regulations are clear and immediate, more closures, reduced harvest, huge economic impacts from Central Oregon to San Francisco; and never a penny in assistance. Not even recognition that economic disasters continue to occur on the coast with alarming regularity. Although the ESA lacks perfection, it is not to blame for the conflicts occurring in the Klamath Basin. Protections are needed to assure survival of Klamath fish.

WHAT COURSE DO WE SET?

1. Investigate and agree on the cause of juvenile and adult salmon mortalities.
2. Increase flows in the Klamath and Trinity Rivers. Support Humboldt County's request for the Bureau of Reclamation to give the 50,000 acre feet, as promised in the 1959 Contract Agreement. Humboldt has agreed to use the water to prevent fishery disasters. Releases could be structured under the guidance of federal, state and Tribal fishery managers.
3. Support water banking and increasing storage capacity.
4. Expand our relationship with knowledgeable local government officials. Leaders like County Supervisors Joan Smith and Marcia Armstrong have proven backgrounds and a willingness to work with agriculture, tribes and fisheries interests. Exchange ideas, especially areas of documented success.
5. Maintain and fully fund the Klamath Task Force and the Klamath Management Council. Even though they make serious fishery management and restoration decisions, they make recommendations based on sound science with open process.

I stand by to help in any way that I can. Thank you for this generous opportunity to speak today.

Mr. CALVERT. Thank you, Supervisor. I would now like to recognize Dr. Lewis for his testimony. Dr. Lewis, you're recognized for 5 minutes.

STATEMENT OF WILLIAM M. LEWIS, JR., CHAIR, COMMITTEE ON ENDANGERED AND THREATENED FISHES IN THE KLAMATH RIVER BASIN, AFFILIATED WITH NRC, UNIVERSITY OF COLORADO, BOULDER, COLORADO

Dr. LEWIS. Mr. Chairman and Committee Members, thank you for inviting me to this meeting. My name is William Lewis. I am professor of Environmental Sciences at University of Colorado in Boulder, and I served, between 2001 and 2003, as Chair of the National Research Council's Committee on Endangered and Threatened Fishes in the Klamath River Basin.

As you know, there was a drought in 2001. And the drought coincided, and I think this is something we might forget the significance of, coincided unexpectedly with the release of regulations that had been prepared ahead of time, restricting water management latitude of Klamath Project, which delivers water to about 220,000 acres of privately irrigated lands, east and south Upper Klamath Lake. The coincidence in time of these events was such of course to lead to the total shutoff of water for the first time to the Klamath Project. In effect the Project was dried up for that season. Had this coincidence not occurred, there might have been time to evaluate by calculation what the effects of this regulation would be in an extreme year, perhaps some measures would have been taken to prevent this kind of tragedy.

At any rate, there were—a lot of things were said on both sides of this issue, and some of them weren't very scientific. But there were some scientific questions that were raised. The water users wanted to know what basis the agencies had for making these decisions, and of course, the agencies had explained their basis in their documents, but I think the users wanted interpretation, reassurance, and a criticism, I suppose, of these decisions.

So the Academy was called on to form a committee, and that was the committee of which I was Chair. The committee had two charges.

One was to prepare rather quickly, over a period of a year, an interim report to focus on the documents surrounding the 2001 opinion and evaluate the science. That was the language that was used in the task. And notice that this stops short of saying whether or not the agencies did exactly the right or wrong thing, but rather to evaluate the scientific basis for the decisions that they made, and then to take a broader overview and determine as best they could what would be needed to make the fishes recover in the future.

In its first effort, which resulted in an interim report, the committee found a lot of scientific basis for a number of the recommendations of the agencies. For example, I would cite the fish screen, which the U.S. Fish and Wildlife Service has been requiring for over a decade and finally was created in 2004, I'm glad to say.

But where water management considerations were concerned, the committee could not find a strong scientific basis at all, either with regard to water levels in Upper Klamath Lake or flows in the Klamath main stem. And so it concluded that these decisions were poorly based in a scientific sense.

The committee also recognized, however, that the agencies must use their judgment quite extensively in carrying out the Endangered Species Act, in the same way a physician uses judgment in prescribing medication early on in a course of treatment. But we also recognize that the agencies could be expected reasonably to change their position as information develops, adjust, perhaps even retract from earlier decisions, and the public must understand this ebb and flow of scientific information and the effect it might have on an agency.

At any rate, the interim report was received with great controversy. The irrigators felt that the committee had sided with irrigation, had seen the merits of irrigation somewhat. And people who were interested in environmental protection felt that the committee had not held up its side in looking after the endangered fishes. Actually, the committee really did neither of those things.

It simply answered the question that was put to it and didn't interpret in terms of policy. But it did raise an interesting issue, and that is what an agency does when it makes an initial judgment that subsequently is contradicted by hard information. That is a very interesting question about the agencies.

Then there was the final report. In the final report, the committee concluded that none of these three fish species could be caused to recover merely by negotiations with the Klamath Project.

That simply is far too narrow a scope, that this is a basin-wide problem, that there are many opportunities to improve the welfare

of these fish beyond water level manipulation and flow manipulation, and the committee outlined a number of these.

Now, the committees—excuse me, the agencies that the committee was considering knew about a lot these things, but didn't have the money to pursue a lot of them, so I'm glad that Congress has acted on that, and I'm glad that the agencies are showing new energy, and I sense, as Representative Walden said, that there is energy in the community here to move constructively on these issues, but it will require much better communication, less animosity, and more money. Thank you.

[The prepared statement of Dr. Lewis follows:]

Statement of Dr. William M. Lewis, Jr., Professor and Director, Center for Limnology, University of Colorado at Boulder, and Chair, Committee on Endangered and Threatened Fishes in the Klamath River Basin, Board on Environmental Studies and Toxicology, Division on Earth and Life Studies, National Research Council, The National Academies

Good morning, Mr. Chairman and members of the Committee. My name is William Lewis, Jr. I am professor of Environmental Science and Director of the Center for Limnology at the University of Colorado's Cooperative Institute for Research in Environmental Sciences. I recently served as Chair of the National Research Council's Committee on Endangered and Threatened Fishes in the Klamath River Basin. The National Research Council (NRC) is the operating arm of the National Academy of Sciences, National Academy of Engineering, and the Institute of Medicine; it was chartered by Congress in 1863 to advise the government on matters of science and technology.

The Lost River sucker and shortnose sucker of the Klamath River basin were listed as endangered by the U.S. Fish and Wildlife Service under the federal Endangered Species Act in 1988. These two fish species, which are restricted in their distribution to the Klamath River basin, were so abundant a century ago that they served as a major food source for American Indians and supported a commercial fishery. Both species are large, have a long life span, and can tolerate a number of kinds of environmental extremes that many other fishes cannot. The two species originally occupied much of the upper half of the Klamath River basin. Their distribution and abundance are now much reduced, and most of the present subpopulations are not self-sustaining.

In listing the two endangered sucker species, the U.S. Fish and Wildlife Service cited overfishing as one cause of decline. Other causes are also important, however, as indicated by the failure of these species to recover after a ban on fishing in 1987. The U.S. Fish and Wildlife Service identified water management practices (including water-level manipulation and entrainment of fish through irrigation structures), adverse water quality, introduction of competitive or predatory fishes not native to the Klamath basin, physical alteration of habitat such as marshes and spawning areas, blockage of migration pathways, and genetic isolation of subpopulations. These factors are related to a number of human activities, including irrigated agriculture, power production, and livestock management.

The coho salmon, a migratory species that spends approximately half of its life in streams and the other half in the ocean, is distributed from California to the Aleutian Islands. It is divided into distinctive genetic subgroups that are termed "evolutionarily significant units." One of these evolutionarily significant units spawns and develops through its early life stages in waters of the Klamath River basin and nearby drainages. Although once abundant in the Klamath River basin, it has declined notably over the last 80-90 years. As a result of its decline, it was listed in 1997 by the National Marine Fisheries Service as threatened under the federal Endangered Species Act. In evaluating the decline, the NMFS listed overfishing as one initial cause. Prohibition of fishing for wild coho (as distinguished from hatchery fish, which bear hatchery markers) has not led to recovery, however. In attempting to identify other factors that may be suppressing coho, the NMFS has listed irrigation-related flow manipulation of the Klamath River, physical blockage of migration pathways by dams or irrigation structures, high temperature or other poor water-quality conditions related in part to flow manipulation, and physical habitat impairment. Coho presently occupy only the lower portion of the Klamath River basin, below Iron Gate Dam. Their previous distribution, prior to the installation of mainstem dams, extended upstream. Coho mature almost exclusively in trib-

utary waters, and migrate to the ocean during spring to complete the second half of their life cycle prior to their return for spawning, after which they die.

As required by the Endangered Species Act (ESA), the two listing agencies responsible for ESA actions on behalf of the listed suckers and coho salmon have conducted formal consultations with the U.S. Bureau of Reclamation, which manages water in parts of the upper portion of the Klamath River basin through its Klamath Project, which serves 220,000 acres of private, irrigated agricultural lands. Because water management is a potential direct or indirect factor affecting the listed species, the consultations were intended to produce documentation of the operational effects of the Klamath Project on the listed species, and to elicit proposals from USBR for avoidance of jeopardy to these species through future operations of the Klamath Project. The listing agencies have engaged in numerous rounds of consultation with the USBR. The consultations have culminated in the production of biological assessments by the USBR and biological opinions by the listing agencies. In its biological assessments, the USBR has proposed changes in water management and screening of its main water intake as well as some other measures intended to benefit the fish. In all cases, however, the listing agencies have found the USBR proposals inadequate and have required more extensive changes in water management and some greater commitments to other actions as well.

The agencies released assessments and opinions during early 2001, as they had in previous years. The biological opinions of the two listing agencies for 2001 required substantially increased stringency in management of water by the Klamath Project. Specifically, the USFWS required that annual minimum water levels in Upper Klamath Lake, which is home to an impaired population of endangered suckers, be less extreme than in previous years, which in effect eliminated part of the storage value of the lake for the Klamath Project. In addition, the NMFS required higher minimum flows downstream of Iron Gate Dam. The effect of this requirement was to reduce further the ability of the USBR to store water in Upper Klamath Lake for use in irrigation. Thus, the total amount of water available to the USBR for use by the Klamath Project in dry years was significantly reduced as a result of the 2001 biological opinions.

After release of the 2001 biological opinions by the listing agencies, it became clear that 2001 would be a year of extreme drought. Whereas similar extremes of drought in recent years (1992, 1994) had led to water restrictions for the Klamath Project, they had not eliminated irrigation on the private lands irrigated by the Klamath Project. The new restrictions for water level in Upper Klamath Lake and flows in the mainstem Klamath could not be met, however, without cessation of irrigation on the lands served by the Klamath Project. While a small amount of water was made available late in the season, there was virtually no irrigation through the Klamath Project during the growing season of 2001. Thus, the coincidence of an extreme drought with new restrictions on water management combined to make disastrous consequences for Klamath Project irrigators and their economic dependents. Had 2001 been a normal or wet year, the restrictions no doubt would have generated much controversy, given that the implications for drought years of the future would have been evident through calculations of water shortfalls in dry years. The events combined, however, to force the controversy to a crisis over a period of just a few weeks, during which water users and their supporters criticized the decisions of the listing agencies, while parties with economic or other interests in fish applauded the ESA-based water restrictions as a step toward restoration of the three listed fishes.

The economic hardship brought on by the combination of drought and the new water restrictions focused much attention on the scientific basis for judgments that were made by the listing agencies. Therefore, the U.S. Department of the Interior and the Department of Commerce asked the National Academy of Sciences (NAS) to form, through the National Research Council (NRC), a committee (the NRC Committee on Endangered and Threatened Fishes in the Klamath River Basin) that would be capable of assessing the scientific and technical issues surrounding the water restrictions. The committee's charge, which was written by the U.S. Department of the Interior and Department of Commerce in consultation with NRC staff, called for the committee to produce an interim report focusing on the strength of scientific support for the biological assessments and biological opinions of 2001. In a second phase, leading to a final report, the committee was charged with a broader overview of the requirements of the listed species for recovery in the future. The committee released its interim report in February 2002 and its final report in October 2003. As is the case with all NRC reports, these two reports were rigorously reviewed externally and were revised by the committee in response to review under supervision of the NRC and the NAS.

In its interim report, the NRC committee found that proposals by the USBR for water management in the future left open the possibility of establishing lower mean water levels in Upper Klamath Lake and lower mean flows in the Klamath River main stem than had been the case over the past decade. Although it was not clear whether changes of this type were actually the intent of the USBR proposals, the committee found the proposals unjustified on grounds that lower mean operating levels and flows were unknown and were not analyzed scientifically by the USBR for its assessments.

In analyzing the USFWS's biological opinion of 2001, the NRC committee found considerable scientific support for a number of requirements specified by the USFWS. For example, installation of a fish screen to prevent outright mortality of multiple age classes of endangered suckers entering the Klamath Project's main irrigation canal near the outlet of Upper Klamath Lake was proposed by the USFWS, and the committee found this recommendation highly supportable. In examining the scientific basis for a USFWS requirement that water levels in Upper Klamath Lake be held higher than they had been in the recent past, however, the committee found considerable data, collected primarily with federal support during the 1990s, that the projections of benefit to the fish from this change in management were contradicted by evidence. Specifically, extremes of water quality impairment producing mortality of suckers in Upper Klamath Lake did not coincide with years of low water level. Also, proposed benefits sought through expansion of habitat associated with higher water levels did not appear in the form of a higher output of young fish, as determined by sampling of fish during the 1990s. Thus, the committee found the scientific basis for the requirement for stricter regulation of water levels in Upper Klamath Lake to be unsupported scientifically, but also noted that this conclusion would not be a valid argument for expanded water-level manipulation.

For evaluation of the needs of coho salmon, the National Marine Fisheries Service relied heavily on habitat modeling, which is common practice for predicting the benefits to fish of higher flows in streams or rivers. The modeling results were not available in final form to the NMFS when it wrote its 2001 opinion, and were not available to the NRC committee during its deliberations. Thus, the NMFS decisions in 2001 based on incomplete modeling could not be considered well supported. More importantly, an underlying assumption of the modeling was that habitat requirements of coho salmon could be equated with habitat requirements of Chinook salmon, which also occupy the Klamath basin. The committee noted that coho salmon are much more strongly dependent on tributaries than Chinook salmon, and therefore are less sensitive to mainstem conditions during the rearing phase than Chinook salmon. Thus, the overall approach of the NMFS, in the opinion of the committee, was scientifically weak. The strongest point brought forward by NMFS had to do with possible benefits of an April flow pulse that would assist the young fish in migrating to the ocean. While this benefit had not been quantified or evaluated empirically, it at least had some potential to be valid.

While the NRC committee found strong scientific support for a number of requirements given by the listing agencies in 2001, the requirements related to water levels in Upper Klamath Lake and water flow in the Klamath main stem had no substantial scientific basis, in the opinion of the committee. This conclusion, as given in the interim report, generated much positive reaction from the community of irrigators and their economic dependents and much criticism from environmentally oriented observers. It seemed to many that the committee had sided with the irrigators and against environmental interests. The committee, however, was merely responding to its charge, and was not aligning itself with one set of interests or the other.

Following the issuance of the interim report, the agencies were required to go through yet another round of consultations and produce assessments and opinions, as before, because of the expiration of the 2001 documents after one year. While the NRC report was not binding on the agencies, it stimulated some changes in the ESA consultations of 2002. In general, the agencies were more energetic and innovative in their consultations than they had been in previous rounds, and were able to produce a ten-year plan rather than one-year plans. Although the ten-year plans can be reopened at any time by the listing agencies, they provide a degree of stability that favors both water management and recovery actions. The USBR, recognizing that use of water on behalf of fish would be a constant feature of future water management, offered increased concessions that it considered to be useful but still consistent with future delivery of meaningful amounts of water through the Klamath project over a wide range of water-year types. It proposed development of a water bank, which might include conditional water rights to be obtained by lease or purchase and to be used to reduce pressure on the irrigation water source during years of drought. The USBR also offered an April flow pulse below Iron Gate Dam

to benefit coho during their migration and made several other kinds of concessions related to coho.

The two listing agencies found the proposals of USBR to be useful but insufficient. Thus, they found that the USBR's proposed operations as outlined in the biological assessment of 2002 would leave the three species in jeopardy, and they issued "reasonable and prudent alternatives," as required by the ESA. The reasonable and prudent alternatives placed deadlines on a number of the proposals made by USBR and also put a volumetric requirement on the water bank. The USFWS, while continuing to back the concept of benefit to the endangered suckers from reduced water-level fluctuations in Upper Klamath Lake, moderated its water-level requirements so as to be more consistent with the data collected on the suckers during the 1990s. Fish screening continued to be an issue; screening of the main canal supplying the Klamath Project was required by USFWS and was accomplished during 2004. The USFWS made several other requirements as well.

The NMFS continued to endorse its habitat-based flow modeling leading to requirements for higher flows in the Klamath main stem, on grounds that expanded habitat in the main stem would benefit coho. The NMFS moderated the effect of these requirements on the Klamath Project, however, by recognizing that the USBR accounts for only approximately half (57%) of total irrigation water use above Iron Gate Dam. Thus, the NMFS apportioned to USBR 57%, rather than 100%, of the quantitative requirement for water needed to meet its prescribed flows at Iron Gate Dam. It also required, however, that USBR participate in actions required to make up the balance (43%) of the water required to provide minimum flows, and it endorsed the water-bank concept.

In its final report, the NRC committee gave several major conclusions relevant to the long-term recovery of endangered and threatened species in the Klamath River basin. First, the committee noted that none of the three species could be expected to recover through any program that is primarily or solely based on consultations with the USBR related to operations of its Klamath Project. While the Klamath Project consultations are mandatory, factors suppressing the species extend well beyond the Klamath Project. For suckers, blockage of a large amount of potential spawning habitat by Chiloquin Dam and by numerous small, privately managed tributary dams and diversions constitutes "take" (mortality or life-cycle impairment) and must be eliminated or circumvented. Restoration of habitat in tributary spawning areas for the suckers above Upper Klamath Lake also is critical, and expansion of resting areas for larval fish at tributary mouths for Upper Klamath Lake is important. The committee viewed the feasibility of reversing poor water-quality conditions in Upper Klamath Lake as low for the near future, and therefore recommended strong emphasis on stimulation of the production of young fish for Upper Klamath Lake to offset adult mortality and expansion or introduction of subpopulations at other locations where manipulation of environmental conditions might be more feasible. For example, the committee recommended establishment of a subpopulation in Lake of the Woods, where suckers were poisoned decades ago in order to make way for game fish.

For coho, the committee recommended much more emphasis on tributaries, where young coho either succeed or fail in reaching the smolt stage for migration to the ocean. The tributaries are plagued by a variety of problems, including excessive drawdown in summer, numerous blockages and diversions that affect the movement of salmon, high temperatures caused by loss of riparian vegetation and excessively low flows during summer, diversion of cold spring flows that originally provided year-round benefit to salmon, degradation of physical habitat by dams, inadequate control of erosion, and effects of livestock on stream banks and stream channels. In addition, mainstem dams block access of coho to tributary habitat, and introduction of large numbers of competitive hatchery-reared fish (mostly steelhead and Chinook) may reduce the success of young, wild coho during their downstream migration; both types of impairment should be considered for possible action. Correction of problems affecting coho obviously must extend far beyond the boundaries of the USBR's Klamath Project.

The NRC committee also diagnosed some procedural and organizational problems with the recovery efforts in the basin. There are no adequate ESA recovery plans for any of the three species. Funding for recovery programs has been inadequate, and would not have supported actions of the scope necessary to produce recovery. Because of intense partisan feelings within the basin about recovery strategies, the agencies must find ways of fostering collaboration through a diverse committee of cooperators who are fully informed on recovery plans and proposals, and who have the opportunity to debate and contribute to them. Guidance for well-meaning landowners who attempt to improve the environment would be very useful in maximizing the beneficial effects of private money directed toward remediation.

The listing agencies in the Klamath basin have been strongly criticized for using judgment not supported by bedrock scientific information. The NRC committee, as expressed in its reports, did not agree with the notion that professional judgment is a useless or inappropriate tool to be used in environmental actions such as those required by the Endangered Species Act. Professional judgment, which involves application of knowledge about the basic requirements of a listed species, is mandatory for agencies that implement the Endangered Species Act. The NRC committee did note, however, that the use of judgment is much more defensible when data are not available, or when judgment is confirmed by at least some data, than when it proves to be inconsistent with accumulating data. In the latter instance, the listing agencies would more likely be effective if they were to modify their judgments, and should not be criticized for doing so, given that modification of initial judgments in response to observations or data is a constant feature in all fields of applied science.

The committee concluded that there is much untapped potential for recovery of the three listed species in the Klamath River basin. Recovery efforts must extend beyond the Klamath Project and its operations to embrace all major factors known to cause mortality or impairment of the endangered fishes. If efforts of this scope can be designed, and are supported by steady funding from the federal government, implementation of the Endangered Species Act in the Klamath River basin could be an inspirational example, especially for the western states.

Mr. CALVERT. Thank you. Our last witness, Mr. Rodgers, you're recognized for 5 minutes.

STATEMENT OF KIRK RODGERS, REGIONAL DIRECTOR, MID-PACIFIC REGION, BUREAU OF RECLAMATION; ACCOMPANIED BY STEVE THOMPSON, REGIONAL DIRECTOR, U.S. FISH AND WILDLIFE SERVICE; AND JIM LECKY, ASSISTANT REGIONAL ADMINISTRATOR FOR PROTECTED RESOURCES, NATIONAL MARINE FISHERIES SERVICE

Mr. RODGERS. Thank you, Mr. Chairman. My name is Kirk Rodgers. I'm the regional director for the Bureau of Reclamation's Mid-Pacific Region. Accompanying me today are Steve Thompson with the Fish and Wildlife Service and Jim Lecky of NOAA Fisheries. Both of those agencies have key roles in the Klamath effort. Your request for our testimony asked that we address water certainty and address endangered species issues as they relate to the project. We have provided written testimony and ask that that be entered into the record. I'd like to summarize that for you today.

One of the first things mentioned is, as you're aware, the Klamath River is not adjudicated, and although that is underway, it does—it will maybe take several more years to do that. And the importance of that is that it helps identify in times of shortage where the priorities go. And so that's one of the things that we think that is a significant challenge to certainty in operations.

But beyond that, and under the current state of the law, Reclamation is obligated to operate the project in compliance with the Endangered Species Act. And the Act limits operational discretion and requires compliance with biological opinions. In the 2001 biological opinion from Fish and Wildlife Service requires minimum lake levels to protect endangered suckers. The NOAA Fisheries biological opinion requires releases to maintain river flows to protect downstream salmon.

In 2001, the infloat Upper Klamath Lake was about half of the average and the 5th lowest it had been since '05. Median requirements from the BOs left insufficient water for the project, as we're all aware, and we're aware of the consequences that that had. And

as those consequences were upon us, we were continually asked tougher and tougher questions. And as has been discussed today, we engaged the services of the National Research Council, and Dr. Lewis has eloquently covered their findings. Let me just add that we have, in addition to those things he's discussed, we've learned some things about—many things from that. But I'd like to cover a couple. One would be that professional scientists can interpret and apply the same data in different ways. We've learned that peer review has value and that we can improve our decisionmaking when we do add additional scientific knowledge. So we should apply peer review as rigorously as we can, where it's appropriate.

Second, I'd like to mention that, as an operational agency, the reclamation needs information in order to make good decisions. And we depend on the scientific community to provide a good knowledge base for us and to advise us in our decisionmaking. These are complex systems, and they need information to make good decisions.

And so to that end, in cooperation with my colleagues, reclamation is taking action to support improvements in scientific data collection. And just to mention a few, we're looking at independent flow analysis of the Upper Klamath Basin. That will assist us in understanding and agreeing on base conditions. There's been a lot of disagreements on what base conditions were. We need to know that. We need to improve our forecast models so that we can include groundwater response and improve the accuracy and reliability of those forecasts. And we're cooperating in the development of a river flow analysis to better understand fish habitat needs. Those were a few examples.

In addition to that, we're working with Fish and Wildlife Service and NOAA fisheries to adjust—make adjustments to the biological opinions. That will assist us in improving certainty. One example is a new incremental adjustment methodology, which will be employed when the hydrology dictates an adjustment to a different water year type. That's been a complication and a problem in the past, and this new methodology we have, hope will help smooth that out. We appreciate the cooperation from the Service and NOAA Fisheries in those action.

We also are doing several other things, and let me just quickly tick off a few of those. This water bank thing that we're doing is helping to provide water for fish while it compensates landowners who voluntarily enter into those programs. We're conducting storage investigations, such as the Long Lake investigation for an off stream reservoir. We're implementing water conservation measures, such as the one we just offered to Klamath Irrigation District. That will save 2,000 acre feet per year when they line their canal, and things like removing Chiloquin Dam.

I see I'm out of time. Perhaps in the course of the Q & A, we can answer any other questions that you may have. Steve, Jim, and I will be glad to do that for you. Thank you, Mr. Chairman.
[The prepared statement of Mr. Rodgers follows:]

**Statement of Kirk Rodgers, Regional Director, Mid-Pacific Region,
Bureau of Reclamation, U.S. Department of the Interior**

Mr. Chairman, my name is Kirk Rodgers, and I am the Regional Director of the Bureau of Reclamation's Mid-Pacific Region. I appreciate the opportunity to appear

before your Subcommittee this morning to discuss Reclamation's efforts here in the Klamath Basin. In attendance with me today are Steve Thompson of the Fish and Wildlife Service and Jim Lecky of NOAA Fisheries. Both agencies have played key roles in the Klamath effort.

Your request for our testimony asked for Reclamation's approach to providing water certainty and resolving endangered species issues as they relate to the Klamath Project. We have provided written testimony and ask that it be made a part of our response to these important topics. I would like to briefly summarize that testimony today.

As you are aware, the Klamath River is not adjudicated. That is, perhaps, one of the more significant challenges to certainty in operations. Under the current state of the law, Reclamation is obligated to operate the Klamath Project in compliance with the Endangered Species Act. The result is that operational discretion is limited to complying with the two existing Biological Opinions (BOs).

The 2001 BO from the Fish and Wildlife Service requires minimum lake levels to protect endangered suckers in Upper Klamath Lake, while the NOAA Fisheries BO requires specific releases to maintain river flows to protect salmon downstream.

In 2001, water inflow to Upper Klamath Lake was about half of average and the fifth lowest of any year since 1905. Irrigation needs were high because rain and soil moistures were low; however, meeting the requirements from the BOs left insufficient supplies for the irrigators.

To irrigators, the water supply interruption in 2001 was unacceptable. And Reclamation could not wave a magic wand and instantly create enough water to satisfy all of the human and environmental water needs.

Many agencies, irrigators, community leaders, and others began asking questions about the biological needs of the endangered species. The President formed the Klamath River Basin Working Group, involving the Secretaries of Interior, Commerce, and Agriculture and the Chairman of the Council on Environmental Quality. The National Academy of Sciences' National Research Council (NRC) was asked to assemble a team of top scientists to examine the Klamath Project and the 2001 BOs.

The results were interesting. The NRC found that there was no connection between fish survival and lake levels. It found that water temperatures, particularly in late summer, and competition and predation from hatchery fish to be important factors affecting ESA-listed fish survival in the river.

The NRC also found that actions focusing primarily upon Klamath Project operations would not yield fish recovery in the Klamath basin.

What have we learned from this effort? At least a couple of things:

1. Professional scientists can interpret and apply the same data in different ways;
2. Adding to our scientific knowledge base is very important to decision-making for these complex systems.

To that end, Reclamation is taking action to support improvements in scientific data collection to support decision-making, such as:

- Developing an "independent flow analysis" of the Upper Klamath Basin, which will assist us in understanding and agreeing upon base conditions;
- Improving our forecast models to include groundwater response and improve the accuracy and reliability of our forecasts;
- Cooperating in the development of a river flow analysis to better understand fish habitat needs.

We are also consulting with Fish and Wildlife Service and NOAA Fisheries with regard to adjustments to the BOs which will assist with improving certainty. One example is a new Incremental Adjustment Methodology which will be employed when the hydrology dictates an adjustment to a different water year type.

We appreciate the cooperation of the Fish and Wildlife Service and NOAA Fisheries in addressing issues such as these.

Other actions we have underway include:

- Managing a water bank, which compensates land owners who elect to forego Project water by either idling crop land or pumping groundwater
- Conducting storage investigations including Long Lake, an off-stream reservoir
- Increasing Upper Klamath Lake storage capacity
- Implementing water conservation measures, such as the recent Water 2025 grant to the Klamath Irrigation District for a canal lining project, saving up to 2000 AF per year
- Removing Chiloquin Dam

Mr. Chairman, just about everyone—from the President's Cabinet Level Working Group to NRC scientists and others around the country—have called for basin-wide cooperation, coordination, and management to deal with the tough water resource issues in the Klamath Basin. Consequently, Reclamation is leading the Conserva-

tion Implementation Program to develop a process based upon science, stakeholder involvement, adaptive management, and Basin-wide cooperation.

The Conservation Implementation Program will help the stakeholders, Tribes, States, and all Federal agencies craft solutions for both the short and long term. I would be pleased to answer any questions you might have.

Mr. CALVERT. All right. I thank you, gentleman. We're now going to go into the questions. I'll remind the Members that under our Committee Rules, we have a 5-minute limitation. However, we'll have time for several rounds of questions.

And first I'll recognize myself. I'll start with Mr. Carman and Mr. Hernandez. And again, Mr. Carman, thank you for your service. My father also served in the South Pacific. He was at Okinawa and Iwo Jima, and he's no longer with us, but your statement was quite eloquent, and we certainly appreciate what you've done.

The question, though, is for both Mr. Carman and Mr. Hernandez. How did the 2001 shutoff impact the Hispanic and the agricultural communities in the basin? Mr. Hernandez, would you like to answer that?

Mr. HERNANDEZ. Well, number of families had to move, mainly the father, because he has to go find source of work, or you know, they got to support their families, so they have to do something. And unfortunately some of the kids, you know, in our culture, the kids don't mind the mom as they do the dad, so some of them got in trouble. Some of the kids did, so that's a big effect.

Mr. CALVERT. And it's one thing that, serving as Chairman of this committee, I go all around the country, and I see the pain with everyone. Mr. Brown mentioned, remember the people. I see various conflicts around water is a very emotional subject, because it is truly the lifeblood of many communities, whether it's Brownsville, Texas, or New Mexico, or here in California—or here in Oregon or in California. But one of the issues that we need to reflect, how do we solve these problems? And one of the questions that I'd like to have an answer to is storage. Mr. Herger brought that up. Would more storage give us more flexibility in addressing this problem from everyone's perspective? And I'd just like a yes or no from all the witnesses, because I'm limited in time. Mr. Hernandez, why don't you start, yes or no, would flexibility help—would more water storage help?

Mr. HERNANDEZ. If we have more water, definitely will help.

Mr. CALVERT. Mr. Carman.

Mr. CARMAN. Yes.

Mr. CALVERT. Mr. Vogel.

Mr. VOGEL. Yes.

Mr. CALVERT. Mr. LaMalfa.

Mr. LAMALFA. Sites reservoir, Auburn Dam, please.

Mr. CALVERT. Mr. Fletcher.

Mr. FLETCHER. Depends on the type of storage.

Mr. CALVERT. Mr. Foreman.

Mr. FOREMAN. Yes, location.

Mr. CALVERT. Mr. Brown.

Mr. BROWN. In general, I'd say yes.

Mr. CALVERT. Mr. Gaines.

Mr. GAINES. Yes.

Mr. CALVERT. Mr. Smith.

Mr. SMITH. Yes.

Mr. CALVERT. Dr. Lewis.

Dr. LEWIS. Yes, if it's not firmly committed to continual use.

Mr. CALVERT. Mr. Rodgers.

Mr. RODGERS. Yes.

Mr. CALVERT. Mr. Thompson.

Mr. THOMPSON. Yes.

Mr. CALVERT. Mr. Lecky.

Mr. LECKY. Yes.

Mr. CALVERT. My God, we've got a—it's unanimous.

With the help of this group here, we just passed a bill in California. Actually, it affects the entire West, called Cal Fed, as Mr. LaMalfa referred to some of the storage that we've discussed over the years. But that is the most difficult part. It's not just money. Folks talk about money as part of the solution. That certainly is, but it also takes political will on everyone here to let everyone know that reasonable storage, done properly, given the flexibility in the systems to allow for water, for the environment, for farmers, for communities, is part of the solution. So I would hope that you as individuals and the areas that you represent and the committees that you head would be a proactive participant, and that is, I think, a part of the solution.

This is one last question in my timeframe. In light of the NRC report indicating that the 2000 water shutoff was possibly not scientifically justified, did incomplete science lead to the action that caused such pain in this valley? I'd ask probably Dave Vogel first.

Mr. VOGEL. The short answer is yes. I think one of the speakers mentioned this earlier, there's a lot of data out there, but scientists often have different interpretations of the same data. And one of the benefits of peer review is you get a fresh new perspective to look at the same data and help determine whether or not you can come to the same conclusions. Usually you have a hypothesis you want to test. You subject that hypothesis to a rigorous set of scientific standards, then you let other scientists examine what you've done to make a determination, whether or not they agree or disagree with you. That's, again, one of the benefits of the peer review that was provided by the NRC's report.

Mr. CALVERT. And Dr. Lewis.

Dr. LEWIS. The NRC committee found that by the end of the 1990s, there was a substantial amount of information on water level in Upper Klamath Lake to suggest that the original idea of holding the water level higher wasn't going to benefit the suckers in itself.

That was a reasonable idea to begin with, data were collected as they should have been, but then the conclusion wasn't reached early enough that we were on the wrong track, either that or some scientists continued to believe there might be something wrong with the data or not enough data. The committee felt the data base was pretty substantial by 2000, 2001.

Mr. CALVERT. Thank you. Mr. Walden.

Mr. WALDEN. Thank you. Dr. Lewis, I want to follow up on that, because I know in the Tribes' testimony, Mr. Foreman's that's been submitted for the record, and I assume Mr. Fletcher would agree, they don't think your group paid enough attention to Tribal rights

and that there are other issues involving lake levels that weren't considered. Can you respond to that?

Dr. LEWIS. Well, The NRC committees are very strictly held to their task. They're not allowed to embroider on their task. The task had to do only with the Endangered Species Act issues within a certain arena defined by that question about degree of scientific support.

But it did acknowledge the Tribal Trust responsibilities of the Federal Government in its statement on context, but it did not deal with that question because it wasn't asked to.

Mr. WALDEN. Part of the issue before this committee, and certainly in our mark-up next week, if that were to occur, is should peer review be required under major ESA decisions? Now, in your role on the NRC panel of the National Academy, you engaged in that peer review. Was your data—were your data or your conclusions peer reviewed?

Dr. LEWIS. Yes, they were very thoroughly reviewed.

Mr. WALDEN. Internally and externally.

Dr. LEWIS. Yes, both.

Mr. WALDEN. OK. So are you—is it correct to assume you're a supporter of peer review science?

Dr. LEWIS. It's sometimes unpleasant.

Mr. WALDEN. But we all go through that every 2 years. You know, we get peer reviewed too. And I guess that's the point. There are those who say peer review will be too costly and slow down the process. Now, I believe—I suppose that could be the case, if you peer reviewed absolutely every single little decision that goes on. Where do we find the balance here, because it seems to be, in the case of Klamath, a lack of peer review, had we had your report before the decisions were made to shut off the water, I think we would have had a different outcome.

Dr. LEWIS. Quite possibly. No, I agree with you. I don't think every single decision or proposal needs to be reviewed. I think the main question for review is: Is the agency on the right track here or is it off track? Has it sort of drifted off of the line of evidence that is most suggestive of what should be done? Because that's easy to do if you're very closely involved with something, you have an initial idea, you continue to follow it, but maybe you get off track after a while, maybe somebody from the outside has fresh eyes and says—

Mr. WALDEN. Wait a minute.

Dr. LEWIS.—you know, this really doesn't add up anymore.

Mr. WALDEN. All right.

Dr. LEWIS. Might have been a reasonable idea to begin with, but doesn't anymore.

Mr. WALDEN. All right. I want to pick up on what my Chairman did. Does everyone here on the panel support the concept of having these decisions independently peer reviewed by panels from the National Academy of Sciences? Can we start at this end, and just a yes or no. Does anybody here oppose it? I mean, do you support independent peer review of ESA related decisions?

Mr. HERNANDEZ. Do I support it?

Mr. WALDEN. Yeah, yes or no, or if you don't have an opinion, that's fine too.

Mr. HERNANDEZ. I don't have an opinion.

Mr. WALDEN. Mr. Carman.

Mr. CARMAN. Yes.

Mr. WALDEN. Mr. Vogel.

Mr. VOGEL. I would have to say with major decisions, yes. For minor ones, probably not.

Mr. WALDEN. All right.

Mr. LAMALFA. Where there's big economic impact or new precedence, I think it's critical.

Mr. WALDEN. Or a major impact on the species, I assume too, economic or species. Mr. Fletcher.

Mr. FLETCHER. Yes. Different people consider different—is it the NRC, is it OSU? You know, we can get into that debate as well, who does the peer review.

Mr. WALDEN. Sure. The legislature I have would call on the National Academy to set up panels, independent scientists who are certified in whatever issue it is, and from those panels you'd have peer review. So you'd support that concept? Mr. Foreman.

Mr. FOREMAN. Yes, peer review should be done. Science remains within science; politics should be left out of it.

Mr. WALDEN. OK. Mr. Brown.

Mr. BROWN. We've gone to peer review process in the Pacific Management Council for the stock assessments. It's pretty well ended most of the argument over the underlying science and level—

Mr. WALDEN. OK. Mr. Gaines.

Mr. GAINES. Absolutely.

Mr. WALDEN. Mr. Smith.

Mr. SMITH. Yes.

Mr. WALDEN. Dr. Lewis, I think you've already—

Dr. LEWIS. I endorse peer review, but if I commit the Academy to it, I could be in trouble.

Mr. WALDEN. You can just speak for yourself as a scientist today.

Dr. LEWIS. Peer review can be very useful, but it also can be overdone.

Mr. WALDEN. All right. And that's what we're going to have to figure out. Mr. Rodgers.

Mr. RODGERS. We need peer review.

Mr. WALDEN. OK. Mr. Thompson.

Mr. THOMPSON. I think I'd agree with Dr. Lewis. I agree—

Mr. WALDEN. Why don't you take that mike so our audience can hear.

Mr. THOMPSON. I agree that the peer review process is a very healthy process and very good for us, but I would be concerned about the number of peer review actions for action agencies that have to take timely actions to get out the door.

Mr. WALDEN. Can you give me an example of where that could cause a problem?

Mr. THOMPSON. For instance, the Sacramento office does 250 biological opinions in a year. If we were to do peer review of each one of them, that would add on 6 months, a year, a long period of time.

Mr. WALDEN. All right.

Mr. DOOLITTLE. May I just add—would you yield just for a follow-up question?

Mr. WALDEN. Since I'm in a negative zone on time, yes.

Mr. DOOLITTLE. Is that 6 months to a year for the total 250 subject to peer review or 6 months to a year for each of the 250?

Mr. THOMPSON. Each individual action could add up to 6 months to a year, depending on the complexity of the decision and how difficult they are.

Mr. DOOLITTLE. Thanks.

Mr. WALDEN. All right. Mr. Lecky.

Mr. LECKY. I think peer review is an important component of the scientific—essential component of the scientific process, but these aren't scientific decisions necessarily. We're required to make a decision in the absence of information. A legitimate scientific decision sometimes is, I don't know the answer. That's not an OK decision under the ESA. We have to arrive at an opinion.

Mr. WALDEN. So even if you don't have science upon which to base your decision, you still have to make a decision?

Mr. LECKY. That's correct.

Mr. WALDEN. But once you make that decision, there's really no appeal anybody here has, right, short of going to the God squad?

Mr. LECKY. Well, not even the God squad is eligible. The appeal they have is in the courts, which is frequently taken advantage of, and of course that slows things down as well. I think, my view, part of the solution is recovery planning and investing in that process and getting the kind of information that would lead us to understand the importance of watershed management and where the real limiting factors for populations are up front would help drive these consultation processes in a more logical fashion.

Mr. WALDEN. I understand that, but I also think there's a role for peer review certainly. Thank you, Mr. Chairman.

Mr. CALVERT. Thank you, gentlemen. Mr. Radanovich.

Mr. RADANOVICH. Thank you, Mr. Chairman. I've always thought that if the Endangered Species Act were as strictly enforced in urban America as they were in rural America, the dynamic in Congress would change rather quickly and we'd have ESA reform in a heartbeat. An example that I have found has been on the Wilson Bridge, the construction of the Wilson Bridge across the Potomac River in Washington, D.C., and the Washington Aqueduct, which purifies water for the District of Columbia. Clearly, the conclusions in those environmental reports that allowed for the construction of the bridge and the purification of water would never be considered as satisfactory in rural America, and yet each area has had a listed endangered species. And so my question is to anybody who wants to answer it, if the Klamath Basin here had a population of 2 million people, would what happened in 2001 have occurred? Anybody on the panel want to respond?

Mr. HERNANDEZ. Depends if you had the same number of people that made the wrong decision.

Mr. RADANOVICH. No response.

Mr. CALVERT. Silence answers the question.

Mr. RADANOVICH. Silence answers the question. Let me ask you this, because in the case of the Washington Aqueduct in Washington, DC, it had been occurring for about 30 years, that they'd dump about 200,000 tons of Potomac River sludge laced with chemicals through a national park into a heritage river, the Poto-

mac River, onto the spawning grounds of the endangered short-nosed sturgeon. And for 20 to 30 years, there's never been a lawsuit challenging the Washington Aqueduct's conducting this practice. Can you tell me if there were environmental lawsuits that prompted the decision of 2001? Were there environmental lawsuits that prompted the agencies to shut the water down to farmers in 2001.

Mr. LECKY. There was a lawsuit, I believe, for not having the opinion in place. The remedy was to just issue an opinion. It didn't specify what the outcome of that opinion had to be.

Mr. RADANOVICH. Can you tell me who sponsored the lawsuit?

Mr. LECKY. I can provide you with that information.

Mr. RADANOVICH. You don't know it.

Mr. LECKY. I don't recall. I don't want to misname the—

Mr. RADANOVICH. Does anybody know? Mr. Fletcher.

Mr. FLETCHER. That was PCFFA, et al, challenging, I believe, the 2000 biological opinion.

Mr. CALVERT. Gentleman, for the record, please state the group again that filed the lawsuit.

Mr. FLETCHER. I think that was PCFFA, et al, challenging the 2000 biological opinions.

Mr. RADANOVICH. Can you tell me what PCFFA is?

Mr. FLETCHER. It's the Pacific Coast Federation of Fishermen's Association. We also joined that lawsuit as well as a result of the 2002 fish kill, just for your information.

Mr. RADANOVICH. OK. One further comment, can anybody give to me—Mr. Vogel, I have an idea that your testimony's very good, that might have an idea to answer this question, but how can a law be changed so that there's an equal application of the Endangered Species Act in every case where there is a listed endangered species?

Mr. VOGEL. Let's see, is your question referring to the enforcement or lawsuits or—

Mr. RADANOVICH. All of the above.

Mr. VOGEL. OK. I think it's pretty evident, there's enough case history examples through biological opinions nationwide that there's no question it's inconsistently applied throughout the United States.

Mr. RADANOVICH. Do you have a solution for that?

Mr. VOGEL. Well, I'm definitely an advocate for peer review.

In fact, 2 years I went back to Congress and testified at the House Resources Committee in favor of peer review legislation. That would be a tremendous start. There's a lot of ambiguity in the ESA that I think needs to be clarified. That ambiguity allows too much subjectivity by individuals in how it's implemented, so the ambiguity needs to be clarified as well.

Mr. RADANOVICH. Thank you very much. I'll wait for the next rounds. Thank you.

Mr. CALVERT. Mr. Herger.

Mr. HERGER. Thank you, Mr. Chairman. And I want to thank each of our witnesses for your outstanding testimony. Mr. Brown, I think you really hit on it, remember the people. I think that's why we're really all here today and how crucially important it is

that we all work together cooperatively to solve this incredibly complex problem that we have.

And I want to also specifically recognize a constituent of mine, Mr. Hernandez, and I want to thank you for coming today and being—and Mr. Carman, for having him come with you. Mr. Hernandez, you certainly do have a very unique story about how the tragic water shutoff of 2001 affected you and your family. And I believe it's important for us to—in highlighting the very real, very devastating human impacts. And if you would, Mr. Hernandez, could you take a brief moment to share with us your story on how you arrived here in the basin and how the 2001 decision ultimately impacted you and your family?

Mr. HERNANDEZ. Well, I arrived here in 1973, and I work here for 5 years or so. Then I went back to Mexico, got married, but since I was here, you know, 5 years and I came here, I was only seventeen years old, so I know this was the place to grew up a family. So when I got married, I decide to come here to Klamath Basin.

We have five kids. One of them was done with school; she's a nurse. Two more in college, one of them is—hopefully he'll—and I know he'll graduate from high school this coming year. The other one decide to make his—he make his own decision to serve the Army—in the Army. And I thought, since he was going to be there for 3 years, I figured he had enough and would get out. Well, last January he told me that he was going to re-enlist. I said what? You want to re-enlist? And he said—I say, why? I like it. And last 2 months or so, he says, I'm re-enlisted and now I'm going to go to Iraq. I say, what? I'm going to Iraq. And I told him, why don't you just get a gun and shoot me and be dead? He pat me on the back, and he said, will be all right. One of you members, you said that somebody from Klamath Basin got killed. What assures me that he's going to be all right? It's his own decision, but you know, I think as a Congressman, we ought to do the right things, you know, ensure our kids or wives or whatever that they are reclude with all the rights and all the—you know, give them the rules so they know what they're going for and, you know. I just want to make sure that they are reclude properly and tell them their rights and the rest.

And how this 2001 affect me, well, you know, farm went, as we say, bye-bye. If it was wrong decision or was right decision, I mean, I'm done now.

Mr. HERGER. So in other words, you lost your farm and you lost your—I believe you went out and did equipment work for other farmers; is that correct?

Mr. HERNANDEZ. Well, I lost my farm. My equipment that I slowly got, it was sold out.

Mr. HERGER. So you started here as an immigrant, raising a family here—

Mr. HERNANDEZ. Yes.

Mr. HERGER.—an outstanding family, obviously a patriotic family, that your son is serving our country now in the War on Terrorism. But in the process, in 2001, you actually lost what you had worked so hard for; is that correct?

Mr. HERNANDEZ. That's correct, that's all that.

Mr. HERGER. So we can see that we—and this is a concern of Blake, and again, his letter.

Mr. HERNANDEZ. I know Blake; I know that kid.

Mr. HERGER. You know Blake?

Mr. HERNANDEZ. I know his father.

Mr. HERGER. And the picture of working with the tractor.

Mr. HERNANDEZ. I know exactly what little kids will feel. I mean, Tulelake is nothing but farming. Merrill, Malin, and half of Klamath Falls, nothing but farming, or better than half of Klamath Falls. And not only them, you got Bonanza, I mean, you know, they might not be affected by the water cutoff, because they're down below us, I guess I should say—

Mr. HERGER. And these decisions have affected you so dramatically, to say that we deserve good science, at the minimum, we deserve good science.

Mr. HERNANDEZ. Yes, we do.

Mr. HERGER. We deserve to have all our scientists look at these issues and make sure they're not needlessly making these decisions to shut off your water, which ultimately causes you to lose your whole livelihood. To say those are important and crucial is quite an understatement, isn't it?

Mr. HERNANDEZ. Yes, it is.

Mr. HERGER. Thank you very much. Thank you, Mr. Chairman.

Mr. CALVERT. Thank you, gentlemen. Mr. Doolittle.

Mr. Doolittle, you're recognized.

Mr. DOOLITTLE. Thank you, Mr. Chairman. Dr. Lewis, earlier when you testified, you indicated that you were not asked in the request that caused you to undertake your study, you were not asked to determine whether the decision made in 2001 or the actions taken there were the right actions; is that an accurate, fair phrase of what—

Dr. LEWIS. What I was trying to get at is that we were asked to judge whether there was significant scientific support beneath each of these recommended—required, actually, required actions. The difficulty of jumping directly from that to right and wrong and that the agencies, as indicated earlier, often are required by law to make a decision when there is no significant site-specific information at all. And then would be true to say there isn't any real strong scientific basis here, we're dealing with professional judgment. But one cannot possibly rule out the use of professional judgment in any sort of applied science. We don't do it—we don't rule it out in medicine or engineering. We have to use it in environmental work as well.

However, where the committee came up with a distinction is that in this case, during the 1990s, quite a bit information had accumulated that ultimately looked directly contradictory to the original idea for fixing, if you will, the Upper Klamath Lake sucker population. So you could ask the question. We didn't ask the question: Was the agency right to go ahead anyway and retain the theory they was working on when it looked increasingly unsupportable from a scientific point of view, were they being—

Mr. DOOLITTLE. Dr. Lewis, I'm asking you that question. Give me your answer, please.

Dr. LEWIS. Is that—that would have to be personal to me, because I don't know what the committee would say in the case.

Mr. DOOLITTLE. All right. So let me ask you this: How do I get the committee to answer that question?

Dr. LEWIS. Well, you'd have—the committee is out of business.

Mr. DOOLITTLE. All right. So what process do we need to go through to have that question answered?

Dr. LEWIS. Well, see, the question is not entirely scientific.

We gave you the science part of it, so someone in policy or law would have to say whether the agency was being excessively conservative, conservative to the point of making—running a high risk of making an error.

Mr. DOOLITTLE. I assume you may answer questions that aren't entirely scientific from time to time.

Dr. LEWIS. Yes, but I'm not considered an expert in nonscientific questions.

Mr. DOOLITTLE. So if we asked the National Research Council to answer that question, are they going to tell us, we can't do it, or we don't do it?

Dr. LEWIS. I suspect they would tell you they don't deal with policy or politics. They deal with technology, science. They answer science-based questions, and that's what they were formed for. That's what's in their founding documents.

Mr. DOOLITTLE. Well, just for my information, who exactly can address a question to the National Research Council? Does it have to come from the executive agencies, as this one did?

Dr. LEWIS. No, it can come from Congress, for example—

Mr. DOOLITTLE. And is Congress this Subcommittee, an individual Member of Congress, or a full committee, or a joint resolution, or a single House resolution? What is Congress for that purpose?

Dr. LEWIS. Anyone who has a budget.

Mr. DOOLITTLE. Fair enough.

Dr. LEWIS. Yes, the government makes the request, the Congress makes the request to the Academy, usually through an agency, through an agency budget, and basically requires the agency to request the Academy to do a job. Now, the Academy—

Mr. DOOLITTLE. They get somebody else to pay for it.

Dr. LEWIS. That's right.

Mr. DOOLITTLE. Good plan.

Dr. LEWIS. But the problem is that the Academy doesn't—is not part of the government and does not accept all requests. It doesn't do politics, and it rarely does policy, only does policy if there's a strong factual scientific technical component to it.

Mr. DOOLITTLE. All right. Thank you. Mr. Rodgers, I probably will only just get into this before my time ends, but the biological opinions that the agencies come up with, well, I guess really—maybe I'm asking—maybe I shouldn't ask you this. I guess the biological opinions come out of either the Fish and Wildlife or NOAA. So let me withdraw the question to you and ask Mr. Thompson or—is it Lecky?

Mr. LECKY. Lecky.

Mr. DOOLITTLE. Lecky. Are those biological opinions—I guess those come about because someone has filed a petition for listing a species as threatened or endangered; is that right.

Mr. THOMPSON. No. The biological opinions are to provide for incidental take, NEA section 7 is a Federal—

Mr. DOOLITTLE. OK. That pertains to section 7. All right.

So somebody wants to do that, and then you do the section 7 consultation.

Mr. THOMPSON. Somebody has an incidental take in their legal duties if they do it out in the landscape, and they need coverage for that take.

Mr. DOOLITTLE. OK. And that request is made to—

Mr. THOMPSON. Biological—

Mr. DOOLITTLE.—the regional director.

Mr. THOMPSON. Usually it's a field level. The project leader out here for the Bureau would submit a biological assessment to the project leader in Klamath Falls or Fish and Wildlife Service or NOAA, and we would render a biological opinion based on their biological assessment.

Mr. DOOLITTLE. All right. Let me see if I understand this. So somebody out in the field makes a request, and when they make the request to the agency, who actually—who gets the request? Does it go through you first as the head of the region?

Mr. THOMPSON. No, normally they go through the field level.

Mr. DOOLITTLE. So it just goes directly to the field?

Mr. THOMPSON. And depending on the level of controversy. Some, like the Klamath, would come through Kirk probably and then back over to me, if they're that controversial.

Mr. DOOLITTLE. Then who makes the determination as to how controversial they are?

Mr. THOMPSON. We do, sit and talk back and forth—

Mr. DOOLITTLE. You mean you and Kirk do?

Mr. THOMPSON. Yes.

Mr. DOOLITTLE. So you get a chance, as the head of your region, each of you, before some opinion is actually issued, is that right, to decide?

Mr. THOMPSON. The way it generally works is Kirk and I talk four or five times a day on a general basis. A topic will come up, we'll discuss it, and we'll try to estimate how controversial that would be and if we need to be involved or not, or if it's one that's a minor decision that the field project leader could make or even a medium or major.

Mr. DOOLITTLE. But the field project leader wouldn't just get this request and start to work on the opinion and tell you about it a few days later or something?

Mr. THOMPSON. No.

Mr. DOOLITTLE. You'd know right away that this was going on; is that right?

Mr. THOMPSON. Normally what we do on controversial or even tough biological opinions is, the day that we know about them, that they're initiated from the agency, we talk then with our field project leader, midway, and then toward the end of the decision.

Mr. DOOLITTLE. And do you have some discretion as to who actually writes this biological opinion?

Mr. THOMPSON. Yes.

Mr. DOOLITTLE. As the head of the agency? All right. Well, I'll—yeah, Chairman, give me more time. Can you comment on that, Mr. Lecky?

Mr. LECKY. I'm sorry. Just a point, NOAA Fisheries is organized a little bit differently than the Fish and Wildlife Service is, and we're a little more centralized. Our opinions result as requests for consultation from other agencies, and those requests come to our regional administrator, and their staff routes it to the appropriate location for work, but the product is actually signed approved by the original administrator.

Mr. DOOLITTLE. Oh, that's a key difference, whereas this product in Fish and Wildlife ends up being signed off in times, unless you decide otherwise, I guess by the project leader; is that right?

Mr. THOMPSON. The controversial ones, I will sign those.

Mr. DOOLITTLE. You will sign those?

Mr. THOMPSON. Yes.

Mr. DOOLITTLE. OK. But I mean, there's a lot of this gray area as to what's controversial and what's not. Maybe this thing in Klamath started out as noncontroversial, although probably not.

Mr. THOMPSON. No.

Mr. DOOLITTLE. All right. I'll come back in my next round and want to go more into this, I think. Thank you.

Mr. CALVERT. Thank you, gentlemen. Maybe this question would be for Mr. Rodgers, and I'm going to get into the issue of adjudication. And I just kind of—I was involved in the negotiation with the Colorado River recently on trying to resolve that issue, the Quantification Settlement Agreement between the upper and lower basin states, which we finally came to some resolution on. But a lot of that, as you know, circled about the adjudication of the Colorado River and many, many years of work. And it seems to me that this problem here has a lot of different players, obviously the agricultural community, fishing community, the endangered species community, the environmental community, but it all goes back to water and how we utilize that water. How much adjudication has taken place over time? Is there any firm knowledge of who owns what around here, as far as water, just for the record?

Mr. RODGERS. There have been more than one adjudication. Lost River did go through an adjudication, which is the east side of the project. And to my knowledge, no water rights certificates were ever issued as a result of that, although the priorities were established on the Lost River.

The Klamath River is, as of this date, unadjudicated, but the adjudication is presently underway. And so as it stands right now, the State of Oregon, who would manage that adjudication, who is managing that adjudication, is in a position of having some knowledge about where the priorities are, based on permits that they've issued in the past, are in a difficult posture, because we've approached them about this in the past when there are water shortages and we ask them to regulate accordance with priority, they tell us because the river is unadjudicated, they don't have a legal mechanism with which to enforce priority.

Mr. CALVERT. Now, part of that adjudication, as it moves forward, and I know that, as they all are complicated, part of it is ob-

viously involved with the Endangered Species Act and how we manage sufficient water flow to satisfy that Act the way it's presently configured. Hopefully we can make some changes to that, but as the way it's presently configured, has there been discussion here—people seem to be upset about single-species management—about overlaying that with a multispecies habitat conservation plan? Has there been discussions in this region about that?

Mr. RODGERS. There have been discussions about that. And in fact, we, working with NOAA Fisheries and Fish and Wildlife Service, have engaged a process called the Conservation Integration Program where we're looking, on a basin-wide basis at—the principal foundation of it will be for endangered species compliance, but we want to expand that out to encompass and look at the needs of other species so that we're taking them as a whole.

Mr. CALVERT. Because it seems to me we've got a short-term problem in how we manage this—get through this problem, continuing problem, in the short term, short term being the next few years, and how do we get through to a long-term solution to this problem? Part of that is going to be adjudication, where everybody understands what their rights are and can deal with it, and obviously management, both in the short term and the long term, management plan for this project, and then of course how we deal with the various species and agricultural rights, Tribal rights, etcetera, etcetera, etcetera. And are we heading down that path yet? Are the people getting in a room yet to start talking about that long-term solution—

Mr. RODGERS. Yes, as it relates to the adjudication, but those matters take quite a long time. I would like to add one thing with regard to adjudication, that which is underway on the Klamath River is being handled by the State of Oregon, and the rights that they're adjudicating are for those residents of Oregon, and it won't address the adjudication of rights downstream from where—when the river crosses the border, as I understand it.

Mr. CALVERT. And it may be, though, that if we're going to have a long-term solution to this problem, obviously short-term work on that, but the long-term solution is to have all parties involved in this long-term negotiation—

Mr. RODGERS. Absolutely.

Mr. CALVERT.—to come to an ultimate resolution?

Mr. RODGERS. Yeah. Our view is that this is a basin-wide effort that must be engaged by the communities that are here to help solve the problem.

Mr. CALVERT. And in this case we have two step, you know, it seems to me that if we can—of course, I don't know if you want to use the quantification settlement agreement as an example. It took us a number of years to resolve that issue, but it seems that this would be somewhat—much more simpler than what we went through with the Colorado River.

Mr. RODGERS. I'm not sure. My colleague Bob Johnson, who worked on that, has informed me of many of the issues they have. I think there's some very strong parallels and similarities here, that I think it would be equally as complicated.

Mr. CALVERT. But you don't start until you begin?

Mr. RODGERS. That's correct.

Mr. CALVERT. Mr. Walden.

Mr. WALDEN. Thank you, Mr. Chairman. I want to follow up on that. And this is probably a sensitive question to ask, but oh, well. Is there a forum in place today to reach a basin-wide solution? There are a lot of different groups, and it seems like we keep adding them. Do you all believe there is one group today that is capable, that everybody's in, or do we need to get rid of all those and start a new one? I'm just throwing out ideas here. Mr. Vogel, we'll start with you.

Mr. VOGEL. The short answer's no. There a lot of groups and organizations that have attempted—

Mr. WALDEN. Right.

Mr. VOGEL.—that kind of approach over the years, but they haven't been successful, because the issues, frankly, are extremely complex. We have multiple interest groups, multiple legal priorities and so forth. The Endangered Species Act ends up being one of the biggest stumbling blocks. Despite what product those groups might produce, they still have to deal with the Endangered Species Act.

Mr. WALDEN. All right. I'm going to have to move fairly quickly here because I got a couple other questions. Is there a group today, and this isn't disparaging about the work these people are doing, because Lord knows they put incredible hours into it, but the question is: Do we have a forum today to solve the problem? Assemblyman.

Mr. LAMALFA. My answer would be, we need one, in that my dealings with some of our farmers on the California side see that we have this arbitrary stripe between—

Mr. WALDEN. Right.

Mr. LAMALFA.—California and Oregon, where there's two different sets of regulations, and one side maybe being more restrictive than the other, you can guess which side that is, but the folks that are farming up here—

Mr. WALDEN. I know.

Mr. RADANOVICH. There's four of us up here.

Mr. WALDEN. Yeah. If you quit drilling your wells and sucking our water underneath the line—

Mr. CALVERT. Gentleman from Oregon will please—

Mr. WALDEN. Oh, I will, I'll settle down. Would you like a little water, sir? OK. Can we—

Mr. CALVERT. This water's from California.

Mr. WALDEN. I thought I noticed a taste to it. Go ahead.

Mr. LAMALFA. Real quick, the need, though, for some kind of consistency for folks for the practical needs they have that work on both sides of the state lines with regards to regulation and having maybe some sort—

Mr. WALDEN. So it needs to have be a bi-state—we ought to have people both sides of the line?

Mr. LAMALFA. And maybe some kind of a waiver where there could be commonly accepted set of standards for farming practices and water use, etcetera.

Mr. WALDEN. All right. Mr. Fletcher.

Mr. FLETCHER. Same thing goes for working groups, task force, those type of things, throw them out and make people come to the same table and speak to the same issues, don't argue over terms.

Mr. WALDEN. Mr. Foreman, Chairman.

Mr. FOREMAN. The forum that is available today, at least on the Oregon side, is the landowners and stakeholders in the basin. That's where the real solution needs to come from.

Mr. WALDEN. All right. Mr. Brown.

Mr. BROWN. Thank you. I actually addressed that in my written testimony, where I concluded that there is not a forum at this time.

Mr. WALDEN. All right. Mr. Gaines.

Mr. GAINES. There absolutely is not a forum in place today that brings the right interests to the table and has everybody represented and that has people that are empowered to make decisions on behalf of their constituents. We need one.

Mr. WALDEN. Good point. Mr. Smith.

Mr. SMITH. Thank you, Congressman. No, we don't have one, but not at the expense of the Management Council, Klamath Management Council or Task Force. Those are good groups.

Mr. WALDEN. All right. Dr. Lewis.

Dr. LEWIS. The NRC committee recommended a committee of collaborators, which would consist of people who disagree with each other, not people who agree with each other, because there is the problem right now.

Mr. WALDEN. All right. Mr. Rodgers.

Mr. RODGERS. One does not exist. We do need one. Some preliminary work is underway.

Mr. WALDEN. All right. Mr. Thompson.

Mr. THOMPSON. I agree with Kirk.

Mr. WALDEN. All right. Mr. Lecky.

Mr. LECKY. Actually, we recognize that in our biological opinion, and we ask the Bureau to explore putting together the CIP, which we think is a forum that might work.

Mr. WALDEN. Here's what then I would ask of each of you, is can you get back to, I think I'll speak for myself, but I assume for other members of the Committee, within the next couple of weeks on who should be on such a forum, how it should exist and all of that. Give us some ideas, each of you will commit to do that so we can look at create—if we got a bunch of forums and everybody at this panel agrees none of them are constituted in a way that will solve the problem or give us a basin-wide solution, then for heaven sakes, let's figure out how to come up with one. I know that won't be easy, but could.

Dr. Lewis, on page 9 of your written testimony, you state that factors stressing the species, sucker and coho, extend well beyond the Klamath Project. What are the most beneficial activities we should be undertaking today, tomorrow, next year to recover those species? And before I have you answer, I just wanted to put on the record, too, because there was some discussion of funding into the basin, in Fiscal Year 2001, \$11.1 million came into this basin for this sort of work. The budget we just approved, the appropriations bill in energy and water contains \$28.1 million into this basin. That's a 153 percent increase under this Administration and this Congress to try and address these issues, and that doesn't include other funds that I know are coming in through Equip and elsewhere. Dr. Lewis.

Dr. LEWIS. I think the—

Mr. WALDEN. It's on.

Dr. LEWIS. OK. I think the money you provided is very invigorating, so I think that will do a lot. But let me give you an example of the role of money in doing important projects. U.S. Fish and Wildlife Service, probably as far back as 1988, when the suckers were listed, said put a screen on the A Canal.

Mr. WALDEN. Right.

Dr. LEWIS. Now, they're documented thousands—tens of thousands of endangered fish being killed right there, very obvious. It's a mechanical solution. The USBR didn't do it. So our committee said, why didn't you do it? They said, well, we get our money from Congress, a lump of money that size must come from Congress. We can't do it out of our operating funds. So there's a problem there on implementation of physical projects and a lot of physical projects are necessary in this basin.

Mr. WALDEN. And we've since done that.

Dr. LEWIS. Right, you've done—

Mr. WALDEN. And Chiloquin Dam.

Dr. LEWIS. Chiloquin Dam's another one, yes. And we need—in the lower basin, we need a lot of habitat restoration for coho; we need to remove or circumvent or build passes around a lot of small obstructions to the movement of fish.

Mr. WALDEN. Do you concur that this problem will not be solved solely on the backs of the project?

Dr. LEWIS. No. This task is indicated in our summary. The list of items goes way beyond the physical layout or the operations of Klamath Project. Now, some good physical projects could be done inside the project, because the project overlays the center of the original distribution of the suckers. So there's some good opportunities there for physical projects that don't necessarily involve manipulation of water in the easy sense.

Mr. WALDEN. OK. Thank you. I'm out of time. Thank you.

Mr. CALVERT. Mr. Radanovich.

Mr. RADANOVICH. Just a couple quick questions. Thank you, Mr. Chairman. Can someone tell me how much money's been spent on the sucker and coho salmon restoration since 2001, and is it possible to determine how many fish have been recovered since then?

Mr. THOMPSON. I could get you those numbers, but I don't have them right in front of me.

Mr. RADANOVICH. Can you get them for me then?

Mr. THOMPSON. Yes, I will.

Mr. RADANOVICH. Is there any science right now saying that the sucker fish are better off because of the 2001 shutoff?

Mr. THOMPSON. Science that says the suckers are better off because the shutoff.

Mr. RADANOVICH. Right.

Mr. THOMPSON. There was a drought year and a lot of other issues there, so it's kind of hard to say what the populations are because or not of the shutoff. There's a lot of other factors that affect the suckers. So the suckers are still struggling, if that's the answer you're looking for; they're still at low numbers.

Mr. RADANOVICH. Still at low numbers.

Mr. THOMPSON. Yes.

Mr. RADANOVICH. Then science to show that.

Mr. THOMPSON. Yes.

Mr. RADANOVICH. OK. All right. Thank you, Mr. Chairman.

Mr. CALVERT. Mr. Herger.

Mr. HERGER. Thank you, Mr. Chairman. Everyone's talking about the fact that this species is down. Mr. Vogel, could you tell us, is there some evidence that the species is there?

Mr. WALDEN. Can we get a microphone.

Mr. VOGEL. Thank you. The question was, are the species—

Mr. HERGER. Everyone is talking about the species not being—the species is down. Don't we have some evidence—have you found some evidence to indicate that perhaps the species is indeed there?

Mr. VOGEL. Oh, there's no question the species is there. The way the Endangered Species Act is structured is that they need a variety of population parameters to evaluate whether or not they're threatened or endangered. So we know they're there; there's no question about it. The question is: Where are they, how many are there, what's their distribution, what's their reproductive ability, and so forth. And I firmly believe that the data that we have in hand now demonstrates very clearly that the population numbers of both Lost River and short-nosed suckers is much greater in size, over a much broader distribution, demonstrating much greater recruitment than was believed at the time the suckers were listed in 1988.

Mr. HERGER. Therefore, if we—if they in 1988 knew that they had the numbers that you say we're aware of now, perhaps they might not have even been listed.

Mr. VOGEL. Yes, I think that's the case. And that's based on a lot of background research I did through the Freedom of Information Act of internal documents within the agencies that led up to the listing. In fact, in 1986 the U.S. Fish and Wildlife Service staff responsible for whether or not to pursue these listings believed there was only 12,000 Lost River suckers in Upper Klamath Lake, and the suckers elsewhere were considered very small or just remnant populations. But they said, we will not pursue endanger because they didn't believe they were endangered. Only 12,000 fish, and yet, just a couple years later, in the early '90s and mid '90s, we now know for a fact that that number's exceeded by tens of thousands of Lost River suckers all over the drainage. But now they flip flop and they say, they are endangered. So that's one of the problems with the subjective nature. What constitutes endangered?

Mr. HERGER. Did you work with the Fish and Wildlife at one time?

Mr. VOGEL. Yes, for 14 years.

Mr. HERGER. Fourteen years. That's a pretty alarming statement that you've just made.

Mr. VOGEL. Well, there is a lot of information in the administrative record that is in my written testimony that demonstrates even more examples of those type of situations.

Mr. HERGER. Just moving to another line of questioning, one thing everyone seems to agree with is that we need more water. And we live in an area of the country where our water falls in the winter time, and we're a desert in the summertime. So it really boils down to storage. And Mr. Rodgers, as I mentioned in my

opening statement, I'm extremely concerned that we have not seen any positive movement forward on studies examining new storage opportunities here in the Basin. And as you know, under the legislation passed by Congress in 2000, the Bureau was directed to study ways to augment water supplies in the Klamath Project through construction of new facilities or by adding to existing ones to add net new water yield for the agriculture in the project.

Mr. Rodgers, I'd like to ask, what is the status of these water storage feasibility studies? I understand the continued study of a potential Long Lake Project, an offstream storage reservoir is supported by more than twenty local groups, including five California and Oregon counties. It's also my understanding that this reservoir was examined in 1987 as part of a larger examination of three potential offstream reservoir sites, but that at the time it was not considered economically viable. However, an independent consultant, MBK Engineers of Sacramento, reviewed those numbers and indicated that they are unnecessarily large. That consultant indicated a new, different analysis could yield much different results. Again, what is the status of the Long Lake study, and what is the status of, in general, of water storage feasibility studies?

Mr. RODGERS. Bureau of Reclamation did study Long Lake, and as you mentioned, we did have some technical problems that we had identified at the time. One was financial. When we were doing the study, one of the objectives is to figure out whether you're going to get sufficient benefits for the cost you're going to invest. And our finding at the time was we would get .4 dollars back for every dollar invested, based on the analysis that we were doing. That was one problem.

And the second problem was that geology in the basin was suspect in the sense that, recognizing this was going to be an offstream storage, meaning you would have to use energy to pump water up into it out of Upper Klamath Lake area and then hold it there, you could recover some of that energy as you brought it back out through generators, but it wouldn't be a one-for-one benefit. You wouldn't want that to leak, because if you were going to put that system in place and the foundation were to seep back out on you, then the energy would have been lost.

So those two things led us to believe that it wasn't a viable project. Since that time, as you're correct, there have been consulting studies that have been engaged, and we are conferring with those groups and are re-engaging that study as we speak. So we are in the process of taking another look at Long Lake. Preliminarily, our findings are that there could be upwards of 300,000 acre feet of water stored in that system. By capacity I don't know what the yield might be on it yet, because recognize you'd have to capture water as it was coming out in a run-off state, and it might take very large pumps to capture that narrow window of time when you're having the run-off in order to fill that system up. So the economics will also be a factor there. We'll need to look at that. We are looking at it.

As far as other studies, there are a couple of things that we do have underway. One is the possibility of expanding the capacity of Upper Klamath Lake. We have looked at it from the standpoint of enlarging it or raising it and concluded that that might not be fea-

sible preliminarily, but it doesn't mean that there isn't possibilities there, because as you're aware, Upper Klamath Lake is a reclaimed lake. And there's perimeter areas along that have been diked and farmed, and it's possible that one could consider reflooding some of that area to gain storage. So that would be one possibility. And one such example is, for instance, the Barns property, which has been identified as a great potential. It could increase the storage capacity of the lake by approximately 30,000 acre feet if reflood—or up to 30,000, depending on how it was managed. So we are looking at those things. We recognize that you would like to see those moved along more quickly, and we're sensitive to that.

Mr. HERGER. Thank you.

Mr. CALVERT. Thank you, gentlemen. Mr. Doolittle.

Mr. DOOLITTLE. OK. Back to the biological opinions. I have here in the committee analysis that on June 3rd, 2002, Reclamation formally objected to both of the biological opinions and opted, I guess, one of those came from National Marine Fisheries and one came from National Fish and Wildlife Service; is that what we're talking about?

Mr. RODGERS. [Witness nodded head.]

Mr. DOOLITTLE. OK. And opted to operate under a 1-year plan that it argued complies with the biological opinions. So when you object to biological opinions, whom do you object to? The ones that issued them, or you know, how does this work?

Mr. RODGERS. The process that we follow is simply is, we put together a proposed course of action or a project that we're going to engage. We write up what the description of the project will be, and we do an analysis on whether or not we believe that—or what the effects will be to the species that are targeted, the endangered species, and we present that to the Fish and Wildlife Service for their opinion.

Mr. DOOLITTLE. Is this—and I just asked—is in response after you've read their biological opinion or while they're formulating it.

Mr. RODGERS. I was just going—I'm doing a little bit of background—

Mr. DOOLITTLE. OK.

Mr. RODGERS.—if I could, for the foundation. We then get their opinion back from them after we've presented them with our assessment. They either make a nonjeopardy call or a jeopardy call, and if it is a jeopardy call, meaning the proposed project will jeopardize the species, then their obligation is to present to us a reasonable and prudent alternative so we can proceed with the action and present that to us. Our responsibility then is to determine whether it's reasonable or prudent.

Mr. DOOLITTLE. So you're still kind of in the driver's seat, even though you have to be afflicted with their biological opinions.

Mr. RODGERS. Yeah. I have the ability to object. And I can even say, that, no, I won't accept your biological opinion, and I'd going to do the action anyway.

Mr. DOOLITTLE. Oh, you can.

Mr. RODGERS. Yes.

Mr. DOOLITTLE. Have you ever done that before?

Mr. RODGERS. No.

Mr. DOOLITTLE. May I encourage you to do so?

Mr. RODGERS. Well, let me tell you what the consequences are, Congressman. For each species that I harm, harass, or kill because I ignored their opinion and took the action, and I don't have incidental take, the fine is, if I recall, it's \$25,000 per incident and a year in jail.

Mr. DOOLITTLE. So this is personal to you at that point?

Mr. RODGERS. It gets very personal at that stage.

Mr. DOOLITTLE. So we've got a law like that, that basically no one then would ever do that.

Mr. RODGERS. I wouldn't.

Mr. DOOLITTLE. Are you aware that anyone has? I mean, I would suspect not, but have you ever heard of anyone who did do that?

Mr. RODGERS. I'm not aware of anyone who has.

Mr. DOOLITTLE. Would that be, gentleman, your experience as well?

Mr. LECKY. There are many examples of where graft jeopardy opinions have resulted in discussions between our agencies, either with the Bureau or Core of Engineers or agencies that do most of the consultations in California. And those discussions usually find solutions and middle ground so that the project can go forward and incidental take can be authorized.

Mr. DOOLITTLE. Let me ask you this; this is really what I'm trying to get to. I don't think I'm mischaracterizing this, the National Research Council report came out and said that lake levels and the increased flows did not—there was not a scientific basis for solving the fish kill that happened in 2001, and maybe they could be helpful in some other way, but I think that's pretty much what the NRC report said. And then, Mr. Rodgers, you've got a preliminary draft report issued by Reclamation, December, 2003, that indicates the historical summer flows on the Klamath were less than what had been prescribed in the 2001 opinion for coho as designed by the NOAA Fisheries. Since these actions that were taken in 2001 have had such devastating effect upon the people in this basin and since we now know that those actions were necessary and that indeed harm was done, why aren't these biologic opinions being modified in the light of subsequent knowledge and experience?

Mr. LECKY. Congressman, they were. The 2001 opinions are no longer in place. They were both—they were both—

Mr. DOOLITTLE. OK. But you're still, for example, demanding under some opinion that we have to get to 100,000 acre feet in this water bank next year, which is—I understand is going to be nearly impossible, meaning that maybe it's possible, but not without hardship. You're going to impose hardship; why?

Mr. LECKY. Just to clarify, that's the 2002 opinion.

Mr. DOOLITTLE. OK. The 2002.

Mr. LECKY. We did look at the 2002 opinion for coho salmon does—is a jeopardy opinion. We made a finding that the Bureau's proposed operations for the period of time, 2002 through 2012, would likely jeopardize coho. Our view was that their proposal was inconsistent with the NRC report and that it would have allowed river flows to degrade over that decade, and rather than operating to a ceiling of a minimum 12, we established the flow schedule as the floor and augmented that for use in the spring time. Again, the

recommendations are consistent with the NRC report to improve out migration opportunities for coho salmon in the spring runs.

Mr. DOOLITTLE. And yet, in apparently their newest report that isn't final yet, and we wish it would be, indicates that the river dried up in spots, historically, before we ever had the Klamath Project. So if anything, the Klamath Project made things better in the terms of the amount of water available, not worse?

Mr. LECKY. Well, that report is still in process. It hasn't been developed, there are—so we need to look at that report and consider it.

Mr. DOOLITTLE. Well, Mr. Rodgers, it's indicated to me that this—well, I don't know, when's it going to happen? When are we going to have it final so we can move on this?

Mr. RODGERS. We are proposing to reconsult on the present biological opinions, and our plan is to have the reconsultation concluded by the water year that begins in 2006. We'll be going through the process of reconsultation through '05, at the end of this water year and beginning of next, and have it concluded by '06.

Mr. DOOLITTLE. Well, given that that will impose an enormous hardship, to get to 100,000 acre feet, because you're waiting until 2006, can't you speed this up so that we can avoid imposing that additional hardship?

Mr. RODGERS. Well—

Mr. DOOLITTLE. After all, you kind of owe them that, given what you did in 2001, don't you?

Mr. RODGERS. Well, these are—you know, these are difficult questions and issues. We work on this water bank that—I mean, you're characterizing as a hardship, and I know it's not easy for folks, but it is a willing seller arrangement, where they do get compensated by coming forward and saying, we have this water that we would have diverted, we're willing to make it available and be compensated for it so that it can go to these fishery needs.

Mr. DOOLITTLE. Here's what I worry about, I mean, willing sellers is good as far as it goes, but there's a famous example in the southern part of the state involving willing sellers that permanently changed the whole region and basically made it pretty much a desert. And I worry about that as the area's representative, for at least part of the area. I worry about that being the solution, that we—you know, because look what's happened to the logging industry under the phony nonsense involving the spotted owl. We've lost all these mills, we've ruined our forests, we're paying millions and millions of dollars to fight forest fires that now are so out of control we have no hope in the next 20 years of ever getting on top of this problem, and I see that type of thing happening here in the Klamath Basin unless we jump in.

So I just want to—I guess my time is up, but as one representative, Mr. Rodgers, and the rest of you, not just Mr. Rodgers, he's just stuck in this position being head of the local Bureau of Reclamation here, but I just would say, as the people's elected representative for one congressional district from the State of California, I would urge you to do everything you can to err on the side of the people who live here. And if you have to make a choice that either benefits the people or the species and you have that discretion, err on the side of the people, because if the people aren't

there, you're not going to have the species, you're not going to have the Klamath Irrigation Project that provides the water in the dry years, you're not going to have the crops being grown that support the waterfowl that we're heard about, that Mr. Gaines talked so eloquently about.

I mean, after all, God created the earth for men and women, and these men and women have been good stewards of what has been under their jurisdiction, and I just would, you know, hearing that—given the history of this in 2001 and now that, you know, not you personally, Mr. Rodgers, I'm going to say you to the ones who are involved as decisionmakers, when you had to make a quick decision and you decided to take a radical action that nearly killed the patient, you know, even the Hippocratic oath says do no harm, you just about killed the patient in that one. And now you have a chance to help the patient considerably by mitigating the requirements of this water bank. And please consider that, because I think putting these people through the idea of getting into 100,000 acre feet, I suspect once some of these people have sold their water rights, they may throw in the towel and leave. And I'm afraid that's the agenda of some, not of the people sitting here, but I think the agenda of some would be to have this become sort of a quasi national park or something up here, where there's very little going on except the waterfowl flying back and forth, and next thing I know, we'll be paying tax payers subsidies to grow crops at the government's expense so that we have food for these things. I'd like to see a multidimensional, multipurpose use.

Thank you, Mr. Chairman.

Mr. CALVERT. Thank you, gentlemen. Mr. Walden. Mr. Walden will ask the last round of questions, and we'll be closing the hearing out.

Mr. WALDEN. Thank you, Mr. Chairman. Again, I want to thank my colleagues for being here today and speaking out on behalf of the folks of this basin, and I appreciate your comments and certainly glad to have your participation in this issue.

Mr. Brown, I want to thank you. I remember our meeting in my office, I think you made reference to it in testimony, about the need and some of the problems your folks face are identical to problems my folks face, glad you all got together, Dan Capen and you, and began some conversations. I think a lot of these problems emanate from the ESA being improperly administered or flawed. And if the ESA is flawed, it's up to us in the Congress to fix it. That buck stops here, and I think it's flawed, and I think it needs to be fixed.

Mr. Fletcher referenced the fact that PCFFA, the Pacific Coast Fishermen's Federation Association, I think I'm close on that, Glen Spain's group, was part of the litigation. Tell me, are you a member of that as a fisherman, Mr. Brown?

Mr. BROWN. No.

Mr. WALDEN. Do you know of—can we get a mike down there to you? Do you know fishermen who are? Is this—I've never figured out who PCFFA is and who they speak for. Are they a fishermen's group?

Mr. BROWN. Yes. And actually, the acronym, Pacific Coast Federation of Fishermen's Associations is just as it says, it's a federation of associations. And to some degree Mr. Smith can speak a lit-

tle bit more to that in terms of California, in that it grew out of California, and there were member associations in California. As far as I know, there are no member associations in Oregon.

Mr. WALDEN. In PCFFA?

Mr. BROWN. Right.

Mr. WALDEN. All right.

Mr. BROWN. And again, individuals don't join, associations—

Mr. WALDEN. Associations join.

Mr. BROWN.—join, and like I said, there's—as far as I know, there are no association members in Oregon.

Mr. WALDEN. All right. Mr. Smith, are there—how many association members, do you know, in California?

Mr. SMITH. It's, Congressman, a number of ports, and they don't all participate, but there are a number of ports that are under the umbrella of PCFFA, or at least when I was involved.

Mr. WALDEN. You're not involved now?

Mr. SMITH. No.

Mr. WALDEN. All right. Do you know—

Mr. SMITH. Would you like the individual ports, some of them?

Mr. WALDEN. That would be good.

Mr. SMITH. Santa Barbara, Morro Bay, Half Moon Bay, San Francisco, Bodega Bay, Ft. Bragg, Eureka, and I think there are probably a couple of others in southern California.

Mr. WALDEN. Do you feel PCFFA speaks for individual fishermen? Because they weigh in on all of these issues up here.

Mr. SMITH. I think there's a mixed feeling.

Mr. WALDEN. All right. I can tell you there's an intense feeling among some. I want to go back to this issue of suckers and, Mr. Thompson, I'm going to direct this at you, and then maybe Mr. Foreman and Mr. Vogel could weigh in as well. One of the questions I've asked at just about every one of these hearings is, how many suckers were they when it was determined there weren't enough and they had to be listed? How many are there now? But most importantly, how many do there need to be to delist? And I know I'm asking for empirical data here, how many suckers, and I know there's also this issue about the year class of suckers, so I'd like comments as well about what led to the decline in the populations, because I understand that a lot of them were simply snagged and caught and killed in a period of time when perhaps we didn't recognize the importance of age class of fish. So I know that's a lot in one question, but can you weigh in, and then hopefully we have time for the other witnesses.

Mr. THOMPSON. Yeah. I'm trying to think of where to start.

The listing part, Mr. Vogel is correct, and part of it, in the listing—to get a species listed is, and to generalize, a little bit easier than it is to get off the list. And if you look at the, you know, what the National Academy report said, and their report was the population densities of suckers are low, and there are no signs of the population returning to their previously high levels, so what we start to look at then is the threats that occur to the population. And we've talked a lot about the screening, about Chiloquin Dam, about the lack of spawning habitat out there, and the abandonment of spawning habitat, the reduction in the fishing pressures, all

those things are good things that have happened, that continue to happen and hopefully will help recover the species.

To get off the list, we have to look at the population levels and also the threats that are in place. And that's what we're proposing to do now with a 5-year status review, which we are going to walk through the current status of the species, take into account the National Academy's report, and also ask all the other people in the valley and up and down the river what their thoughts are on the status of the science, of the species, and the populations. After we complete the peer-reviewed status review, we will ask—I will ask our staff to complete the updated recovery plan, and then I can answer your questions a lot better about how many, when they would come off the list, and when populations would be stable.

Mr. WALDEN. Because, I mean, I'll make sure Chairman will not only get the information, too, from the Klamath Tribes and Dr. Vogel, but it just seems to me that we go into these listings, I think the Chairman said there are 7 that have recovered out of 1,300 put on the list, and we need to do a better job of figuring out what the end target is, because we keep throwing things out that—we've taken 24,000 acres out of farm production, we've screened the A Canal, we're working on removal of Chiloquin Dam or pass it. We're doing a lot of these things, but it seems like the end of the day, it's never enough. And so I want a recovery program and I want to hold people's feet to the fire to say, if we do these things, then that will lead to a delisting and not keep moving the goal post. Is that—do you have any other comments on that?

Mr. THOMPSON. No. I think those are all valid concerns, that we need to move in that direction. And I would like to also compliment the farming community up here for—my uncle's a dairy farmer, and I have seen, when you challenge farmers to do good things to the resource, they generally respond the best way they know how, so I think the farming community's made some huge strides forward.

Mr. WALDEN. I'm getting the hook from the Chairman, but can we have the Chairman respond maybe, Mr. Foreman? Can we get a mike down to Chairman Foreman? And while that's happening, I want to thank Sheriff Evenger of the Klamath County Courts, City of Klamath Falls, Donny Boyd, Mike Burn, Bob Gasser, Dan Kempen, and others here, and everybody involved in the Ross Ragland Theater, and everybody who made the hearing possible. There, I got that public service announcement in, and you now have the microphone, Chairman Foreman. Thank you.

Mr. FOREMAN. OK. Thank you, Congressman Walden, and I appreciate your efforts in making it possible for the Klamath Tribes to at least be here to answer some questions. I think the real issue here today, and with all due respect, Congressman Doolittle, is at what point in time are we going to go back and determine the damages done to society? We've got to think about this a bit, because life did not begin with the creation of the Klamath Reclamation Project; life began before that. There were people here prior to that. Their hurts and their lifestyle was upturned just as much as anybody else's was. And the loss of our fisheries is just as important as the loss of other things.

And I'm somewhat offended by the tone here, because we sympathize, we recognize with the farm community, and we don't want to see them suffer the things that we've suffered. But life did not begin in 1959 or 1905. There was life before that, and we have to recognize that all of us in this basin have suffered, and we've got to keep that in mind.

I want to as—I want Tribal children to grow up knowing that there's fish available for them to harvest, just as farm children should grow up knowing that they should have a future. There has to be a balance here. If we continue on this road, that doing away with the ESA is going to solve this problem in the basin, we're deceiving ourselves. We've really got to get to the point where we recognize the real problems here. Storage is one of them, we all agree to that. We've got to work toward a solution toward the real issue.

I view the ESA as basically the gas gauge in your car. And if one were to take the gas gauge out—the gas gauge basically warns you if you're low on gas. By taking the gas gauge out and repairing it, removing it, doing whatever, is not going to solve the problem that you're low on gas. You can put a new one in, and you're still going to be low on gas. We've got a more serious problem here in the Basin, and I really need to make that point. So I thank you.

Mr. WALDEN. I would just—I think what you're hearing some of us say is we want to make sure that gas gauge reads adequately and appropriately and you can trust what the reading is. I mean, that's my view of why we need peer science.

Mr. FOREMAN. We agree.

Mr. WALDEN. Mr. Chairman, I'd also like to ask unanimous consent at this time to enter into the record a video recording of some events that took place today.

Mr. CALVERT. Without objection, so ordered.

[NOTE: The video submitted for the record has been retained in the Committee's official files.]

Mr. WALDEN. Thank you, and thank you for your generous time.

Mr. CALVERT. No problem. Mr. Herger, you have a closing statement.

Mr. HERGER. Thank you, Mr. Chairman. I want to, on behalf of everyone, sincerely thank you for bringing this hearing here. We've heard this morning how incredibly important, crucial this is to the lives of all of us who live here in southern Oregon and northern California. And I have to believe, and I do believe and know, that a nation that some three decades ago could not only put a man on the moon but bring him back alive can certainly work together to meet the needs of our fishermen, of our Indian Tribes, of the Venancio Hernandez of our community and certainly of the 8-year-old Blakes of the world, that we can do that. Certainly that is our task, and by working together and rolling up our sleeves, we can do that. And again, I believe this hearing today is helping us move closer to doing that. So thank you very much.

Mr. CALVERT. Thank you, gentleman. Mr. Doolittle for his brief closing statement.

Mr. DOOLITTLE. Thank you, Mr. Chairman. Mr. Foreman, I apologize if my remarks offended you. I did not mean to offend you, but I do believe in those remarks, but I hope you know—and that's why I began opening the way I did today—that I recognize that

this is a complex problem that has many parties. I think this has been an outstanding hearing. I mean, there's more agreement here that we saw out of everyone today, even with widely divergent points of view, that we have seen, at least that I have seen expressed before. I do believe that there is a solution. I recognize that, and you had great testimony, by the way. For those of you who haven't read it, I'm sure it's out there to read. But it was—it made the points very effectively about how life didn't begin with the birth of this Klamath Irrigation Project. And I recognize there are problems to the fisheries that are—perhaps they're permanent, maybe many of them can be resolved. We hope they can, and I will certainly support, you know, that resolution to improve them, not just getting the things delisted, but making them be even more prolific as they once were.

And that will take a cooperative effort.

But I just—I do want to say, as the area's representative, we can all sit around here and have our rhetorical positions, or we can find a solution. I believe that with goodwill and with enough resources devoted to it, it is possible to have a solution.

I must say, I appreciated hearing from the coastal representatives, since those aren't my areas, learning about the, you know, the real problems of the commercial fishermen at that end. That was useful to understand. And if we do these things right, then all of these issues should improve. Anyway, I for one make the commitment to work together to do that, and I'm sure my colleagues feel the same. And I thank you, Mr. Chairman, for this hearing.

Mr. CALVERT. I thank you, gentleman, for his statement. I would like to thank this community for hosting us here today. It certainly was helpful to me and certainly to this committee to listen to this great testimony from all of our witnesses, obviously from a diverse point of view, but as Mr. Doolittle stated, there's some hope here. I hear some folks who want to come around and sit down and try to work this out. This has happened before, and I would suggest that that begin as soon as possible, that you all start working for a long-term solution to this. It won't happen overnight. You got a lot of Federal agencies involved, such as Corps of Engineers, EPA, Fish and Wildlife, etcetera, etcetera, etcetera. But it won't begin until you start, as I said earlier, so I would encourage you do that.

In the short term, I hope that we, all of us, can help. We're legislators, we have a job to do, but at the end of the day, it really takes good management on the part of our agencies, and I know that they feel under the gun here today, and I appreciate that, but it's a big responsibility. We appreciate your attention to this issue.

Again, I'd like to thank this community for hosting us, and with that, I have one little statement here for the record. The hearing record will be held open for ten additional days for responses. For those interested in submitting testimony for the record, please e-mail the testimony to resources.committee@mail.house.gov, or fax the testimony, that's easier, (202)226-6953. If there's no further business before this committee, I want to thank the Members for attending. We are adjourned.

[Whereupon, at 11:40 a.m., the Subcommittee was adjourned.]

NOTE: The letters and statements submitted for the record by the following individuals and organizations have been retained in the Committee's official files.

- Armstrong, Marcia H., Fort Jones, California
- Baines, Larry, Medford, Oregon
- Black, Eric, Co-Chair, SOSS
- Borchmann, Craig
- Bowen, Liz, Callahan, California
- Bradford, Carol District Manager, Medford Irrigation District
- Brock, William and Melyn, Bonanza, Oregon
- Buckman, Jennifer T., Lingell Valley Irrigation District
- Bushue, Barry, President, and Greg Addington, Associate Director, Government Affairs, Oregon Farm Bureau Federation
- California Farm Bureau Federation (faxed)
- Cartwright, Therese, Rocky Point, Oregon
- Cheyne, Alvin, Klamath Falls, Oregon
- Cochran, Jo Whitehorse, Klamath Falls, Oregon
- Cole, Robert, Chiloquin, Oregon
- Cowman, Chuck, Everett, Washington
- Eicher, Jeff, Manager, Rogue River Valley Irrigation District
- Foreman, Allen, Chairman, The Klamath Tribes
- Fuhr, Brian, Rocky Point, Oregon (support upgrade of ESA)
- Gasser, Patsy, Merrill, Oregon
- Gasser, Bob, Merrill, Oregon
- Gherardi, Terry, Pollack Pines, California (faxed)
- Grader, William F. "Zeke," Jr., Klamath Falls, Oregon
- Griffith, John
- Hart, Blair, Hart Cattle LLC
- Hays, John V., Unity, Oregon
- Heiney, Wilma, Tulelake, California
- HisleBeard, Will
- Howell, Donald, President, Siskiyou Resource Conservation District
- Hunt, Helen Newkirk
- Jud, William
- Kennedy, William D., Klamath Falls, Oregon
- Keppen, Dan, Klamath Water Users Association
- Kerns, E. Martin and Shirley, Klamath Falls, Oregon
- Kerr, John and Priscilla, Merrill, Oregon
- Krizo, David, Tulelake, California
- Krizo, Jacqueline, Tulelake, California
- LeDieux, Patricia, Klamath Falls, Oregon (support upgrade of ESA)
- Ligon, Jeraldine, Sierra Vista, Arizona
- Meline, Rick, Klamath Falls, Oregon
- Moudry, Chris
- Pendleton, Jim, Manager, Talent Irrigation District
- Ransom, William C., Chairman, The Klamath Bucket Brigade, Inc.
- Rathbun, Floyd W., Fallon, Nevada
- Rick, Sharon E., Tulelake, California (faxed)
- Riddle, Lee
- Rivett, Robin L., Pacific Legal Foundation
- Rodenhurst, Aaron K., Rocky Point, Oregon

- Rykbost, Dr. Kenneth, Klamath Falls Oregon
- Scronce, Karl, President, Oregon Wheat
- Shepard, Richard B., Ph.D..
- Shumate, Sharon, Chairman, Ferry County Natural Resource Board
- Smith, Joan T. Supervisor, Siskiyou County, California
- Smithson, Julie Kay, London, Ohio
- Stefenoni, Thomas E. Manager, California State Grange
- Thomas, Rachel, Huachuca City, Arizona
- Tonsing, Robert, Executive Director, NPPC
- Tulelake Growers Association, Tulelake, California
- Turner, Randall and Bonnie, Malin, Oregon
- Unger, Roberta, Klamath Falls, Oregon
- Urquides, Jess
- Ward, Rick, Klamath Falls, Oregon
- Wiggins, Gary, Meza, Arizona
- Will, Wade and Dorothy, Tulelake California
- Williams, McCoy, Director, Financial Management, GAO
- Winnied, Mr. and Mrs., Tulelake, Oregon
- Woodley, Rick, Klamath Falls, Oregon
- Woodman, Barbara, Klamath Falls, Oregon
- Wright, Cindy, Tulelake, California
- Wright, Jan, Gem Limousin Ranch

